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including the right to development

Human rights bodies and mechanisms

Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights

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I. Introduction

1. On 13 June 2013, the Human Rights Council adopted its resolution 23/9, in which it requested the Advisory Committee to submit a research-based report to the Council, at its twenty-sixth session being held in June 2014, on the issue of the negative impact of corruption on the enjoyment of human rights, and to make recommendations on how the Council and its subsidiary bodies should consider this issue.
2. During its eleventh session, on 16 August 2013, the Advisory Committee established a drafting group for the present report, composed of Saeed Mohamed Al Faihani, Laurence Boisson de Chazournes, Mario Luis Coriolano, Latif Hüseyinov, Alfred Ntunduguru Karokora, Obiora Chinedu Okafor, Katharina Pabel (Rapporteur), Anantonia Reyes Prado, Dheerujlall Seetulsingh, Ahmer Bilal Soofi and Imeru Tamrat Yigezu (Chair).
3. At the same session of the Advisory Committee, the drafting group developed a questionnaire, in accordance with Council resolution 23/9, which was sent to different stakeholders and had a deadline of 31 October 2013, which was later extended to 14 November 2013. A total of 73 responses were received: 37 from States, 16 from national human rights institutions, 14 from non-governmental or civil society organizations, and six from international or regional organizations or academic institutions.
4. During its twelfth session, which was held in February 2014, the Advisory Committee and the drafting group discussed, both in public and in private, the "Preliminary research-based report on the negative impact of corruption on the enjoyment of human rights" (A/HRC/AC/12/CRP.3), which had been prepared in the intersessional period. Further discussions were held during the thirteenth session of the Committee, in August 2014, on the basis of which the preliminary report was further elaborated.

II. What is corruption?

A. Definition of corruption

5. To this day, there is no single, consistent and recognized definition of corruption, at the international level. Remarkably, even the United Nations Convention against Corruption¹ does not provide a definition of corruption, even though the purpose of that Convention is specifically to promote and strengthen measures to prevent and combat corruption more efficiently and effectively, and to promote and support international cooperation in the prevention of and fight against corruption.² A common approach to the notion of corruption is the definition proposed by Transparency International. According to that definition, corruption is "the abuse of entrusted power for private gain".³ This, however, is a rather broad definition which encompasses a wide range of different behaviours. In contrast to the provisions typically included in criminal law, which determine specific offences, the above-mentioned definition is more open. At the same

¹ The United Nations Convention against Corruption entered into force in 2005. Available from http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

² See art. 1 of the United Nations Convention against Corruption.

³ Transparency International is a non-governmental organization that works internationally to promote "a world in which government, politics, business, civil society and the daily lives of people are free of corruption". See <http://www.transparency.org/whatwedo>.

time, a definition based on the three specific elements of “abuse”, “entrusted power” and “for private gain” may exclude some conducts that should also be characterized as corruption. For example, the use (or abuse) of illegally claimed power can lead to corruption. This rather broad definition can, therefore, nevertheless be too narrow in respect of specific forms of misbehaviour that should also be regarded as corruption.

6. For the purposes of the present report, it is not absolutely necessary to develop a clear-cut definition of corruption. In order to analyse the link between corruption and impairment of the enjoyment of human rights, the result and impact of the conduct should constitute the focus of interest. Moreover, the development of a definition of corruption was not part of the Human Rights Council’s request to the Advisory Committee to prepare a report on the negative impact of corruption on the enjoyment of human rights.

B. Different categories of corruption

7. Even though there is no generally agreed definition of corruption, different forms of corruption have been recognized. When looking at corruption from a human rights perspective, it is interesting to differentiate between corruption by the State (corruption in the public sector) and corruption by non-State entities (corruption in the private sector).⁴ Corruption in the public sector can occur in government, in administration, in the legislature and in the judiciary.⁵ In those contexts, the State is clearly accountable for any violation of human rights resulting from the conduct of persons acting in their public capacity.

8. Non-State actors play a crucial role in the proliferation of corruption in many countries. Companies can engage in acts of corruption by bribing State actors or other non-State actors (commercial bribery) or by receiving bribes. The non-State actors themselves are responsible for any act of corruption that they are involved in. They are bound by criminal and civil law and must bear all legal consequences. A number of private sector organizations and initiatives exist that are dedicated to the fight against corruption in business. Among these, the United Nations Global Compact⁶ is an important initiative that provides a principle-based framework for businesses in order to tackle corruption.⁷

9. The State has a duty to protect against any adverse human rights impacts arising from acts of corruption by non-State actors, including corruption by the private sector. The duty of States to protect against human rights abuses by third parties obliges States to take effective regulatory or other measures to prevent such acts by third parties, to investigate violations that occur, to prosecute the perpetrators as appropriate, and to provide redress for victims. Examples of efforts that have been undertaken in that regard include measures to ensure transparency and equality in public procurement, such as public procurement schemes in different countries, or, at the international level, the World Trade Organization agreement on government procurement.⁸ Furthermore, strategies to repatriate funds of illicit

⁴ See, for example, Sharon Eicher, *Corruption in International Business* (Gower Publishing Company, 2009), p. 4 et seq.

⁵ In respect of the phenomenon of judicial corruption and combating corruption through the judicial system, see A/67/305.

⁶ See <http://www.unglobalcompact.org> (accessed 15 October 2014).

⁷ See, for example, Jean-Pierre Méan, “The actors in the fight against corruption”, in *Le pacte mondiale des Nations Unies 10 ans après*, Laurence Boisson de Chazournes and Emmanuelle Mazuyer, eds., (2011), pp. 69, 77 et seq.

⁸ World Trade Organization. Revised Agreement On Government Procurement, annex to the Protocol Amending the Agreement on Government Procurement, adopted on 30 March 2012 (GPA/113).

origin can be another measure to counter the negative impact of corruption on the enjoyment of human rights, as such funds can be generated by corruption (see A/HRC/25/52).

10. Corruption not only occurs at the national level, but at the international level too, notably in international organizations, including international non-governmental organizations, and in transnational corporations. In the case of international organizations, each organization is responsible for its conduct and, especially, for any resulting violation of human rights. It is more difficult to establish the responsibility of specific States for corruption occurring within transnational corporations. On the one hand, each State is responsible for fulfilling its human rights obligations, and therefore must fight corruption committed by transnational corporations operating on its territory. On the other hand, it is quite clear that in order to fight corruption in transnational corporations adequately and effectively, there is a need for transnational and international efforts. The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,⁹ which constitute an authoritative global framework for managing risks to human rights arising from business activities, does not explicitly draw a link between business, human rights and corruption. Rather, the Guiding Principles imply that States have duties to ensure that corruption does not interfere with their obligations to protect against corporate-related human rights abuses. For their part, business enterprises have a responsibility to refrain from involvement in any corrupt activity that may impinge on the enjoyment of human rights. Consequently, the human rights-based approach to countering corruption established in the present report can help to fight corruption in national businesses and transnational enterprises.

III. In what respect does corruption have a negative impact on the enjoyment of human rights?

11. A link between human rights and corruption can be established in two different ways:

- (a) A violation of human rights may occur as a result of a corrupt act;
- (b) Anti-corruption measures could violate human rights.

12. Although it is important not to forget the second aspect (the violation of human rights through anti-corruption measures), especially if instruments of criminal prosecution are applied in combating corruption, the present report, in line with the request of the Human Rights Council, focuses on the first of the above-mentioned aspects of corruption.

Available at http://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.pdf (accessed 15 October 2014).

⁹ The Guiding Principles were developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (see the annex to the Special Representative's final report to the Human Rights Council (A/HRC/17/31)) and were endorsed by the Council in its resolution 17/4 of 16 June 2011.

13. As a result of developments over the past years, it has been established that there is a clear linkage between the negative impact of corruption and impairment of the enjoyment of human rights. For example, the Office of the United Nations High Commissioner for Human Rights (OHCHR) stated in November 2013:

"In recent years, United Nations and regional organizations have increasingly recognized the negative impacts of corruption on the enjoyment of human rights."¹⁰

14. An important step in that direction was the United Nations conference on anti-corruption measures, good governance and human rights, which was organized pursuant to Commission on Human Rights resolution 2005/68 and was held in Warsaw on 8 and 9 November 2006 (see A/HRC/4/71). One session at that conference highlighted the adverse effect of corruption on human rights and aimed to identify the role of anti-corruption measures in protecting human rights and creating an environment conducive to the promotion of those rights.

15. Earlier, in its resolution 2003/2 of 13 August 2003, the Sub-Commission on the Promotion and Protection of Human Rights had established a mandate for a special rapporteur on corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights. That mandate was subsequently endorsed by the Commission on Human Rights in its decision 2004/106. The Sub-Commission appointed Christy Mbonu as the Special Rapporteur, who was tasked with preparing a comprehensive study on corruption and its impact on the full enjoyment of human rights, in particular economic, social and cultural rights, based on her working paper (E/CN.4/Sub.2/2003/18) and the opinions expressed during the debate on the issue at the fifty-fifth session of the Sub-Commission. Also in resolution 2003/2, the Sub-Commission requested the Special Rapporteur to submit a preliminary report to the Sub-Commission at its fifty-sixth session, a progress report at its fifty-seventh session and a final report at its fifty-eighth session.

16. The Special Rapporteur endeavoured to establish in the working paper (E/CN.4/Sub.2/2003/18), the preliminary report (E/CN.4/Sub.2/2004/23) and the first and second progress reports (E/CN.4/Sub.2/2005/18 and A/HRC/11/CRP.1) that the enjoyment of both sets of rights, be they economic, social and cultural, or civil and political, were seriously undermined by the phenomenon of corruption. She pointed out in what respect human rights were affected by corruption. The conclusions and recommendations of the first progress report were endorsed by the Sub-Commission in its resolution 2005/16.

17. As corruption manifests itself in many ways and occurs in a multitude of contexts, it is nearly impossible to identify all of the human rights that can be violated by corruption. To give some examples: if there is corruption in the education sector, the right to education can be violated. If there is corruption in the judiciary, the right of access to courts and the right to a fair trial can be violated. If there is corruption in the health sector or the social welfare sector, the right to access to medical service or the right to food can be violated (among others). Moreover, the principle of non-discrimination can be affected if a person has to bribe someone in order to get favourable treatment or access to a public service. It is difficult to find a human right that could not be violated by corruption.

18. This view is supported by many of the responses to the questionnaire, by different stakeholders. The responses make it clear that corruption has a negative impact on the enjoyment of human rights. They mention a wide range of human rights that can be violated by corruption. These include economic and social rights, such as the right to work, the right to food, the right to housing, the right to health, the right to education, and the right to public services; the right to development; the principle of non-discrimination; and

¹⁰ OHCHR, *The Human Rights Case Against Corruption* (Geneva, 2013), p. 4.

civil and political rights, such as the right to a fair trial and the right to public participation. This overview illustrates the above-mentioned thesis that nearly every human right can be affected by corruption; this point is highlighted in the submission by OHCHR.

19. Judicial corruption is a very concrete example that illustrates the negative impact of corruption on the enjoyment of human rights. While corruption in all areas threatens the rule of law, democracy, and human rights, in the case of judicial corruption the right of access to the court and the right to a fair trial by an independent, impartial and competent tribunal is directly affected.¹¹

20. As States have different kinds of obligations resulting from their human rights commitments, it is useful to classify the possible violations of human rights caused by corruption according to the different obligations imposed on States:

(a) Firstly, corruption can affect individuals (individual negative impact). As has been shown before, there is often a direct violation of the human rights of the individual who is affected by corruption. Depending on the context in which corruption occurs, a wide range of different human rights can be violated. Corruption frequently results in discriminatory access to public services.¹² The impact on an individual can also be the result of an indirect effect from corruption. For example, if public authorities illegally allow the deforestation of land in return for a bribe, the right to food, the right to housing and the right to health of the people living in the area concerned may be violated;

(b) Secondly, corruption can affect specific, identifiable groups of individuals (collective negative impact). This category includes the effects of corruption that not only affect individuals but also impact upon groups of individuals. For example, corruption can exclude the poor from access to goods and services offered by the administration, or from access to justice. Or, coming back to the example given above, illegal deforestation may affect specific ethnic minorities or indigenous peoples living in the areas concerned. It can be concluded that vulnerable groups such as women, children, persons with disabilities, the elderly, the poor, indigenous people or people belonging to minorities are particularly affected by corruption. This is especially true in relation to access to public services and welfare, which is often of tremendous importance for people belonging to the above-mentioned groups. In her opening statement made on 13 March 2013 at the Human Rights Council's panel discussion on the negative impact of corruption on the enjoyment of human rights, the former High Commissioner for Human Rights referred, as an example of the negative impact of corruption on the enjoyment of human rights, to vulnerable groups' access to justice being undermined.¹³ Sometimes, corruption is only one element of a human rights violation or one factor aggravating an already existing human rights violation concerning specific groups. For example, if the right to education of certain vulnerable groups is already violated as a result of discriminatory access requirements, the demand by an official for payment of a bribe compounds the human rights violation. Another example is persons deprived of their liberty, who can be victims of corruption, and at the same time, of inhuman or degrading treatment;¹⁴

¹¹ Parliamentary Assembly of the Council of Europe, Committee on Legal Affairs and Human Rights (background document prepared by the European Human Rights Association), AS/Jur (2014) 19, p. 10.

¹² See, for example, *The Human Rights Case Against Corruption*, p. 4.
See also International Council on Human Rights Policy and Transparency International, eds., *Corruption and Human Rights: Making the Connection* (2009), p. 32 et seq.

¹³ *The Human Rights Case Against Corruption*, p. 4.

¹⁴ For more detail, see the seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, para. 83 et seq.

(c) Thirdly, corruption can concern society at large (general negative impact). This means that, in addition to the effect that corruption has on individuals or groups, there is also a negative impact upon society at large, whether this is in a national or an international sense. There are two main aspects that are frequently mentioned in discussions of the negative impact of corruption on human rights.¹⁵ The first aspect relates to the financial and economic resources that are affected by corruption. Corrupt practices divert funds from development and therefore imply a reallocation of funds that may interfere with the effective enforcement of human rights, especially for vulnerable people. Corruption reduces the resources available for the progressive realization of economic, social and cultural rights (and therefore undermines States' obligations under article 2 of the International Covenant on Economic, Social and Cultural Rights). The second aspect relates to the realization of democracy and to implementation of the rule of law. If the authorities of a State are pervaded by corruption, the people's confidence in the government, and eventually in the democratic order and the rule of law, is undermined.

21. For the purposes of the present report, it is of minor importance whether a single act of corruption leads to a violation of human rights in a strictly judicial sense. The meaning of the term "negative impact on human rights" is much broader than "violation of human rights". While a court dealing with possible violations of human rights has to consider whether a specific human right has been violated, measures against corruption can take into account different types of negative impact from corruption.

22. Corruption has a negative impact on the enjoyment of human rights of all those affected by it. But its negative impact on the enjoyment of human rights by vulnerable persons is compounded. Persons belonging to minorities, indigenous peoples, migrant workers, persons with disabilities, refugees, prisoners, women, children and those living in poverty are often the first to suffer from the impact of corruption.¹⁶ This underscores the obligation of every State to protect the human rights of people belonging to those groups in order to prevent any human rights violation caused by corruption.

23. Another approach to classifying types of corruption is to differentiate between active and passive corruption. This distinction is discussed, for example, in the commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which is sponsored by the Organization for Economic Cooperation and Development (OECD).¹⁷ Active corruption means spending money or providing other benefits to achieve undue advantages, whereas passive corruption refers to the receipt of money or other benefits as an undue advantage. The distinction between offering bribes and taking bribes is very clear. Nevertheless, it is doubtful whether this distinction is helpful from a human rights perspective. The focus of the present report is on the negative impact of corruption on the enjoyment of human rights, and therefore it has a victim-oriented approach. In cases of corruption, it can be difficult to determine whether the victim has taken part in the corrupt act actively or passively. It is even possible that the victim has stood outside the corrupt agreement. For example, where people are forced to pay for access to public services, those who pay bribes are active in corruption but they are also victims. For that reason, the OECD anti-bribery convention does not use the term "active

¹⁵ These aspects are also discussed in the OHCHR submission to the questionnaire.

¹⁶ Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, para. 80.

¹⁷ Available from http://www.oecd.org/dataoecd/anti-bribery/ConvCombatBribery_ENG.pdf.

The Convention was adopted by the Negotiating Conference on 21 November 1997 and entered into force on 15 February 1999. See also the seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, para. 72 et seq.

bribery", in order to avoid it being misunderstood as implying that the briber has taken the initiative and the recipient is a passive victim. It is more useful to determine which party is the victim in a corrupt setting. In many cases, this can be determined by examining the distribution of power between the parties to the corrupt agreement. Typically, the less powerful or even oppressed party will be the victim. This is reflected in the distinction between "petty corruption", which takes the form of a low-ranking public official taking a bribe for doing something that is already required by law or for not doing something that is prohibited by law, and "grand corruption", which is carried out by high-level officials who seek payment for exercising their discretionary powers.¹⁸

IV. What is the value in linking corruption with its negative impact on the enjoyment of human rights?

24. Corruption is mainly dealt with from a criminal perspective.¹⁹ Anti-corruption measures — in the national and the international contexts — primarily concentrate on prosecution of the related criminal offences. International anti-corruption treaties encourage or even oblige States parties to take steps within their legal order to criminalize certain kinds of behaviour defined as corruption. However, discussing the negative impact of corruption on the enjoyment of human rights should not be seen as jeopardizing any effort to combat corruption by means of the criminal law. Corruption is a crime. Impunity in cases of corruption must end. In that sense, a human rights perspective to combating corruption and its effects is complementary to the criminal law approach.

25. However, the United Nations Convention against Corruption and regional conventions against corruption include preventive measures (e.g. accountability, transparency, and access to public information) that States parties are obliged to take. Without disregarding those efforts, anti-corruption measures are focused mainly on the consideration of criminal offences, the necessary sanctions, and international cooperation in prosecution. The situating of anti-corruption measures within the criminal law narrows the focus to the perpetrators. The purpose of criminal proceedings is — broadly speaking — to determine the person responsible for the offence. Focusing criminal proceedings on the perpetrator can lead to a loss of focus on the victim of the corruption. The position of those affected by corruption is not very strong in criminal proceedings. Furthermore, the criminal approach does not offer ways of addressing the structural problems caused by corruption. It is concentrated, by its very nature, on a single offence, and typically cannot address the collective and general effects of corruption referred to in the present report.

26. Corruption can also be combated by applying remedies from private law. This approach is quite common among States. In international law, the Civil Law Convention on Corruption, which was adopted by the Council of Europe in 1999,²⁰ deals, inter alia, with compensation for damage, liability, the validity of contracts and the protection of employees, and therefore focuses on the consequences of corruption in private law. Furthermore, the United Nations Convention against Corruption²¹ requires each State party to take measures to address consequences of corruption, for example considering corruption

¹⁸ See, for example, the statement by Nihal Jayawickrama in the report on the United Nations conference on anti-corruption, good governance and human rights, A/HRC/4/71, p. 8.

¹⁹ Leonie Hensgen, "Corruption and human rights – making the connection at the United Nations", in the *Max Planck Yearbook of United Nations Law*, Armin von Bogdandy and Rüdiger Wolfrum, eds., vol. 17, pp. 197–219 (2000) (Brill and Nijhoff, 2013).

²⁰ Civil Law Convention against Corruption, ETS No. 174.

²¹ Adopted by the General Assembly in its resolution 58/4 of 31 October 2003.

a relevant factor in legal proceedings to annul or rescind a contract, or to withdraw a concession (article 34). Article 35 obliges States parties to take measures to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation. One distinction between the criminal law approach and the private law approach in the fight against corruption is that the latter addresses the impact of corruption on the person concerned and aims to provide redress in the form of compensation.

27. A human rights perspective on the impact of corruption can add an approach that moves the victims to the centre of the fight against corruption. It does so by highlighting the negative impacts that corruption brings to the individual concerned, to groups of individuals typically affected by corruption (which are very often marginalized groups), and to society at large. Analysing the link between corruption and impairment of the enjoyment of human rights may contribute to a better understanding of the effects of corruption — notably, its human dimension and social implications — and can be an important step towards making corruption a public issue. In that way, the social impact of corruption is made visible; this generates awareness in society about the consequences of this scourge and creates new alliances in the fight against corruption.

28. Moreover, applying a human rights perspective to acts of corruption by State and non-State actors reveals that the State bears the ultimate responsibility for such acts. This responsibility means that the State must abstain from engaging in any form of corruption in order to avoid violating human rights. Moreover, the State is responsible for reacting to the negative impact of corruption in order to fulfil its human rights obligations, and in that connection, criminal prosecution is one of the instruments for combating corruption. Criminal prosecution is not, however, an effective tool for remedying the negative consequences of corruption for the individual, for specific groups or for society in general, while from a human rights perspective, States are required not only to prosecute such crimes, but also to take measures to address the negative impact of corruption. Furthermore, by looking at corruption from a human rights perspective, the need for preventive measures becomes even more apparent. By integrating a human rights perspective into anti-corruption strategies, the implementation of preventive policies relating to matters such as transparency, affidavits, laws on access to public information, and external controls, becomes an obligation.

29. Corruption can lead to a human rights violation directly or indirectly. Corruption may directly constitute a violation of a human right when a corrupt act is deliberately used as a means to violate a right, or when a State acts in a way that prevents individuals from enjoying that right or fails to act in a way that ensures that individuals can enjoy that right. In other situations, corruption is an essential factor contributing to a chain of events that eventually leads to the violation of a human right. In such a case, the right is violated by an act that derives from a corrupt act and the act of corruption is a necessary condition for the violation. Such a situation will arise, for example, if public officials allow the illegal importation of toxic waste from other countries in return for a bribe, and that waste is placed in, or close to, a residential area. The rights to life and health of residents of that area would be violated, with the violation caused indirectly as a result of the bribery. Another example is the situation of prisoners who are forced to bribe prison guards in order to avoid ill-treatment or to ensure good conditions of detention. This kind of corruption affects a whole group indirectly. As the Committee against Torture pointed out in a recent report: "Linking anti-corruption and human rights frameworks in practice requires an

understanding of how the cycle of corruption facilitates, perpetuates and institutionalizes human rights violations.”²²

30. From a more substantive perspective, there are parallels between the main anti-corruption principles (such as participation, transparency and access to information, and accountability) and the scope of human rights (such as freedom of expression and freedom of the media, access to information, and the principle of non-discrimination).²³ Therefore, strengthening the enjoyment of human rights in general, and of specific civil or political rights and the principle of non-discrimination in particular, is a valuable instrument in combating corruption. Whereas combating corruption through criminal law and private law means taking repressive and remedial measures, the promotion and strengthening of human rights is a preventative anti-corruption measure.

31. The need to integrate preventative measures into efforts against corruption has been clearly emphasized. Furthermore, promoting and strengthening human rights may — in the long term — contribute to a well-informed and emancipated civil society that is more and more able to reject corruption in all forms and circumstances. According to OHCHR: “An efficient anti-corruption strategy must be informed by key human rights principles. An independent judiciary, freedom of the press, freedom of expression, access to information, transparency in the political system and accountability are essential both for successful anti-corruption strategies and for the enjoyment of human rights.”²⁴

32. The linkage between anti-corruption measures and human rights can also promote access to human rights mechanisms to combat corruption. A wide range of mechanisms exists for monitoring compliance with human rights at the national, regional and international levels. By drawing a link between acts of corruption and violations of human rights, new opportunities for litigation or monitoring can be identified.²⁵ This approach is fully in line with article 34 of the United Nations Convention against Corruption. According to that provision, each State party must take measures to address the consequences of corruption. If a violation of human rights can be determined as a consequence of corruption, the State is obliged to ensure that appropriate measures are undertaken.

33. Combining strategies for fighting corruption and for promoting human rights can bolster both objectives. On the one hand, human rights can form a part of an anti-corruption strategy via the use of human rights mechanisms. On the other hand, fighting corruption is, in itself, a way of preventing human rights violations. By promoting the necessary elements of good governance (such as civil and political rights, transparency, and accountability), human rights and anti-corruption efforts can be mutually reinforcing.²⁶ For example, the ability to promote and protect civil and political rights rests upon the ability to effectively combat political and judicial corruption (and vice versa). Transparency and access to information empower individuals to make informed decisions — from exercising their voting rights, to monitoring how State expenditures are spent. At the same time, creating such openness limits opportunities for abuses by politicians, the police and judges. Businesses are thus provided with incentives to minimize their involvement in corruption.

²² Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, para. 76 et seq.

²³ See art. 1 (c) of the United Nations Convention against Corruption.

²⁴ *The Human Rights Case Against Corruption*, p. 5.

²⁵ International Council on Human Rights Policy and Transparency International, eds., *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities* (2010), p. 45 et seq.

²⁶ *The Human Rights Case Against Corruption*, p. 5.

When accountability mechanisms are weak or non-existent, it becomes easy for corruption and for human rights violations to occur.²⁷

34. It must be stressed that the human rights approach is not meant to be the exclusive way to tackle corruption. Highlighting the connection between human rights and corruption does not mean to jeopardize the prosecution of people found guilty of criminal offences because of acts of corruption or their liability under private law. The purpose of examining this connection is to identify additional avenues for developing strategies against corruption.

V. Are there experiences of integrating a human rights perspective into the fight against corruption?

35. The responses to the questionnaires received from States, national human rights institutions, non-governmental organizations (NGOs), and other stakeholders have permitted an analysis of whether, at the national level, there have been any experiences of integrating a human rights perspective into the fight against corruption.

36. The responses highlight the different institutional approaches to dealing with corruption. In a number of States, independent agencies have been tasked with counteracting corruption. Other States, in their replies, make reference to agencies or departments of the government that were assigned similar responsibilities. The organizational structure of such agencies or specialized institutions varies from State to State. In some States, NGOs are an important instrument in combating corruption. In addition, inspection bodies (e.g. supreme audit institutions) play an important role; some of these bodies expressed their interest in exploring human rights-based approaches, and work collaboratively with civil society and human rights organizations. Other States mention criminal prosecution or human rights institutions as the main instruments used in their fight against corruption.

37. With regard to the integration of a human rights perspective into strategies to combat corruption via cooperation between anti-corruption institutions and human rights institutions, the responses from States to the questionnaire reflect a multifaceted situation. Some of the responses indicate that there is either no cooperation or no effective cooperation. Often, there is no formal cooperation, but rather informal cooperation, via, for example, meetings, workshops, lectures, common training sessions, or exchanges of information. Inter-institutional working groups are a more formal means of cooperation mentioned in the responses. Some States indicate that cooperation between the institutions concerned exists on a case-by-case basis. To summarize, many States emphasized the need for, and the importance of, cooperation between the anti-corruption institutions and the human rights institutions, while specifying that such cooperation is at present informal and ad hoc in nature. These findings are also reflected in the responses to the questionnaire from national human rights institutions and some NGOs.

38. With regard to NGOs' responses to the questionnaire, it is noteworthy that some NGOs quote examples of cooperation between anti-corruption institutions and human rights institutions. However, no information is provided about the ways in which that cooperation takes place. The need for and importance of such cooperation is stressed in some responses.

39. In that regard, the response from the Council of Europe should be highlighted. It provides an illustrative example of integrating a human rights perspective into strategies to

²⁷ See Sharon Eicher, *Corruption in International Business*, p. 8 et seq.

combat corruption. As examples, the Council of Europe listed its Civil Law Convention on Corruption (mentioned earlier), and the establishment of the *Groupe d'États contre la corruption*, which invited the Council of Europe Commissioner for Human Rights to share his views on the possible impact of corruption on the effectiveness of human rights. In his view, the protection of victims of corruption, and the protection of persons who report suspicions of corruption, should be seen as important tools in promoting both human rights and ethical behaviour.²⁸

40. From a more substantive (rather than an organizational) angle, it can be established from the answers to the questionnaire by States and other stakeholders that human rights play an important role in anti-corruption strategies. What is emphasized by some respondents is the importance of a well-informed and participatory society in order to combat corruption. This outcome would be further strengthened by human rights education, which can raise awareness of corruption.

41. Many of the respondents to the questionnaire state that it is essential to highlight the significance of the human rights perspective in the fight against corruption, and to integrate that perspective into anti-corruption policies. With regard to the question on the role of United Nations human rights bodies and mechanisms, many stakeholders suggest that measures be taken that are aimed at awareness-raising and education. More concretely, the relevant United Nations bodies are invited, in the responses to the questionnaire, to develop and present examples of good practices of combining anti-corruption measures with human rights. Furthermore, they are asked to prepare information and suggestions: to cite an example, they are asked to develop specific guidelines and strategic plans on how to integrate human rights into anti-corruption strategies. The answers to the questionnaire indicate that this substantive input should be shared by means of international conferences, seminars and trainings organized by the United Nations in cooperation with States. The importance of adequate information and of the training of national experts on this issue is also highlighted in the responses to the questionnaire.

VI. Corruption and human rights: the “non-victims”

42. When analysing the connection between corruption and human rights, the main focus is on the possible negative impact on the enjoyment of human rights for the victims of the corrupt act. That focus is the main advantage of carrying out such an analysis. The human rights of other actors involved should not, however, be disregarded. While the present report focuses mainly on the negative impact of corruption on the victims, a brief look at other persons involved is necessary.

43. Persons suspected of having committed a criminal offence relating to corrupt behaviour have rights as part of the criminal proceedings being taken against them. Even if effective criminal prosecution is an important tool against corruption, the rights of accused individuals must be guaranteed.

44. Human rights defenders — persons who individually or together with others strive for the promotion and protection of human rights and fundamental freedoms — are often subjects of harassment, intimidation, threats, arbitrary arrest and attacks. This also includes persons who denounce and fight corruption. According to the Declaration on Human Rights Defenders, States have a duty to protect human rights defenders against violence, threats,

²⁸ See *Groupe d'États contre la corruption*, Twelfth general activity report (2011), document GRECO (2012) I E Final.

retaliation, discrimination or any other arbitrary action as a consequence of their legitimate activities in promoting and protecting human rights.

45. Journalists reporting on cases of corruption or promoting human rights as part of their work play a crucial role in the dissemination of information, in awareness-raising, and in the realization of human rights and the fight against corruption. They often discover grievances and bring them to the attention of the public. The information that they provide is an essential precondition for transparency and responsibility. In its established case law, the European Court of Human Rights has emphasized the function of journalists as a "public watchdog".²⁹ Journalists frequently come under pressure because of their reporting. They may be prosecuted, defamed, harassed or even attacked. States are obliged to guarantee freedom of expression but also any other human rights that may be violated by means of threats or attacks against journalists.

46. Whistle-blowers' actions lead to the public disclosure of grievances in administrations or enterprises, and can contribute to the process of discovering and combating grievances in the institutions concerned. Whistle-blowing can be a valuable element in the fight against corruption in both public and private entities. Although a number of elements need to be examined about the behaviour of whistle-blowers,³⁰ they can play an important role as insiders who bring incriminating facts to the knowledge of the public. The State is under an obligation to guarantee the right to freedom of expression also to whistle-blowers. This is reflected in the recommendation of the Council of Europe Committee of Ministers on the protection of whistle-blowers, which was adopted on 30 April 2014.³¹ The Committee of Ministers recommends that member States have in place a normative, institutional and judicial framework to protect individuals who, in the context of their work-based relationship, report or disclose information on threats or harm to the public interest.

VII. Recommendations by the Advisory Committee

47. In its resolution, the Human Rights Council requested the Advisory Committee to make recommendations on how the Council and its subsidiary bodies should consider the issue of the negative impact of corruption on the enjoyment of human rights. The resulting report makes substantive as well as procedural recommendations.

48. It is largely accepted that there is a need to link anti-corruption measures with the realization and protection of human rights. What is missing at this stage, however, is strategies to translate the substantive linkage into concrete measures. It seems difficult to develop such strategies or concrete measures in an abstract manner. It seems more useful to identify good and best practices, from which to derive more general guidelines. Such best practices and guidelines would have to be communicated to national experts in an appropriate manner. Information-sharing, discussion and training could be considered, as ways of communicating with national experts. One possibility could be to develop standards on the independence and the modalities of

²⁹ See, for example, European Court of Human Rights, 27 March 1996 (GC), *Goodwin v. the United Kingdom*, No. 17488/90, §§ 39, 46.

³⁰ See, for example, European Court of Human Rights, 21 July 2011, *Heinisch v. Germany*, No. 28274/08, §§ 65 et seq.

³¹ Council of Europe, recommendation of the Committee of Ministers to member States on the protection of whistle-blowers, CM/Rec(2014)7, adopted on 30 April 2014.

anti-corruption agencies, drawing on the experience of OHCHR and the Human Rights Council with strengthening national human rights institutions.³²

49. In order to identify the above-mentioned best practices and to develop guidelines, a comprehensive study could be conducted by the competent bodies of the Human Rights Council. The study should aim at the development of concrete measures on how to establish the linkage between anti-corruption measures and a human rights-based approach in practice. Three different perspectives could be considered in the study:

(a) How can anti-corruption institutions improve their work by integrating a human rights approach (e.g. the negative impact of corruption on the enjoyment of human rights)?

(b) How can human rights institutions expand the scope of their work by considering corruption as a reason for violations of human rights?

(c) How can the work of anti-corruption institutions and human rights institutions be interlinked, from the substantive, structural and organizational points of view?

50. Moreover, the study should aim at finding criteria to establish whether an act of corruption leads to a human rights violation, and, contrariwise, whether a human rights violation leads to corruption. A list of attributes and indicators could be established as a basis for mainstreaming the issues in both fields and could contribute to rendering the connection between corruption and human rights operational. Equally importantly, the study should cover the protection of anti-corruption activists, whistle-blowers and journalists reporting on corruption. In that regard, one possible approach could be to reinforce protection of the above-mentioned persons under the Declaration on Human Rights Defenders.³³

51. Preventive measures are the most effective means of countering corruption and of avoiding its negative impact on the enjoyment of human rights. Therefore, prevention at every level — national, regional and international — should be strengthened. Prevention requires awareness-raising, information-sharing, education, and the training of all stakeholders involved. Furthermore, sharing of best practices and guidelines, as mentioned above, can be a core element of preventive measures. One key aspect of preventive measures is to address, explicitly, the needs of vulnerable groups, who may be the very first victims of corruption and human rights violations.

52. The Advisory Committee recommends using the special procedures of the Human Rights Council to integrate a human rights perspective into anti-corruption strategies. Within the framework of the United Nations human rights bodies, a special procedures mandate (thematic mandate) could be established to examine, monitor, advise on and report on major phenomena of human rights violations. Such a mandate can be given to an individual — i.e. to a special rapporteur or an independent expert — or to a working group of experts (composed of five members). With regard to the issue of assessing the violation of human rights caused by corruption, it is appropriate to establish either an independent expert or a working group. The mandate holders would be able to receive information about (possible)

³² See the statement delivered by Transparency International to the Advisory Committee, on 12 August 2014, during the Committee's thirteenth session. Available from <http://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/Session13/TransparencyInternational.pdf>.

³³ Adopted by the General Assembly, A/RES/53/144.

violations of human rights caused by acts of corruption. In that way, they would be able to have an overview of human rights violations occurring as a result of corruption. The impact of corruption on specific human rights could be analysed, and gaps in protection could be identified, including the question of compensation for damage.³⁴ On the basis of this, new strategies that strengthen synergies between anti-corruption and human rights measures could be developed in the Human Rights Council and its competent bodies. Alongside the establishment of a specific mandate on the thematic issue of the negative impact of corruption on the enjoyment of human rights, every thematic and country mandate should consider paying attention to the linkage between corruption and human rights.³⁵ Given the wide range and the complexity of the issue, it may be appropriate to establish a five-person working group.

53. Moreover, it is recommended that examination of the issue of corruption as a possible cause for human rights violations be integrated into the universal periodic review. According to Human Rights Council resolution 5/1 and the provisions on the universal periodic review mechanism, the universal periodic review process provides the opportunity for each State to provide information about actions it has taken to fulfil its human rights obligations and to improve its human rights situation. In the universal periodic review process, particular attention could be given to the question of whether, and to what extent, human rights violations in various States are consequences of corruption. Furthermore, actions against corruption, as means of improving the general enjoyment of human rights, could be included in the universal periodic review.³⁶

54. Also, in the framework of the complaints procedure of the Human Rights Council, specific attention should be paid to possible violations of human rights caused by corruption. The Working Group on Communications and the Working Group on Situations, which are the competent bodies to examine communications, should bear in mind the negative impact of corruption on the enjoyment of human rights. Any connection with acts of corruption or corrupt behaviour as causes of the alleged human rights violations should be indicated in the course of the examination of a communication. Also in this respect, a catalogue of criteria (as mentioned in para. 50) may be helpful.

55. There is a strong need for United Nations bodies and organizations to enter into dialogue with each other and with other international organizations dealing with anti-corruption strategies. This inter-institutional approach should include, in particular, the United Nations Office on Drugs and Crime, as the guardian of the United Nations Convention against Corruption. It is of utmost importance that all the institutions involved have a good knowledge of each other, that they share all information, and that they establish linkages between the measures that they take. The mutual consideration and integration aims at building a network in order to act more effectively in an anti-corruption alliance.

³⁴ See art. 35 of the United Nations Convention against Corruption.

³⁵ See the submission by OHCHR to the questionnaire.

³⁶ See the submission by Denmark to the questionnaire.



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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Human rights bodies and mechanisms

Research-based progress report of the Human Rights Council Advisory Committee containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability

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I. Introduction

1. In the light of the increasing concerns regarding the adverse impact of unilateral coercive measures on the enjoyment of human rights,¹ the Human Rights Council, in its resolution 19/32, requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to organize a workshop to explore the issue of the relationship of unilateral coercive measures and human rights, including the various aspects of the negative impact of unilateral coercive measures on the enjoyment of human rights by the affected population, with the participation of States, academic experts and civil society representatives. The workshop, which was held in April 2013, examined the various issues and views relating to the issue, including the legitimacy of the said measures from the perspective of human rights. A number of conclusions and recommendations were submitted to the Council for its consideration, including a proposal that the Advisory Committee be tasked to conduct an overall review of independent mechanisms to assess the impact of unilateral coercive measures and to promote accountability.²

2. In its resolution 24/14, the Human Rights Council requested the Advisory Committee to prepare a research-based report containing recommendations on mechanisms to assess the negative impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability. The present progress report, to be presented to the Council at its twenty-eighth session, was prepared pursuant to that request. In resolution 24/14, the Council also requested the Advisory Committee to seek the views and inputs of Member States and relevant special procedures, national human rights institutions and non-governmental organizations during the preparation of the report. It requested OHCHR to organize a workshop on the impact of the application of unilateral coercive measures on the enjoyment of human rights by the affected populations, in particular the socioeconomic impact on women and children, in the States targeted, and to prepare a report on the proceedings of the workshop and to submit it to the Council at its twenty-seventh session. Pursuant to that request, a workshop was held on 23 May 2014 in Geneva and the proceedings of the workshop submitted to the Council at its twenty-seventh session.³ The progress report has also greatly benefited from the outcomes of the workshop.

3. Pursuant to Human Rights Council recommendation 12/6, the Advisory Committee established a drafting group comprising Mikhail Lebedev, Obiora Chinedu Okafor, Ahmer Bilal Soofi, Jean Ziegler and Imeru Tamrat Yigezu. The drafting group elected Mr. Ziegler as Chairperson and Mr. Yigezu as its Rapporteur.⁴ The Committee requested the drafting group to submit a draft progress report to the Committee at its thirteenth session, taking into account the replies to the questionnaire prepared during the twelfth session and subsequently circulated to Member States, relevant special procedures, national human rights institutions and non-governmental organizations.

4. Accordingly, the drafting group submitted a draft progress report to the Advisory Committee at its thirteenth session, in August 2014.⁵ At the session, members of the Committee as well as States and non-governmental organizations provided useful

¹ See for example, General Assembly resolutions 66/156 and 67/170. See also A/65/199, A/66/138, A/67/181 and A/68/211.

² A/HRC/24/20, para. 31.

³ See A/HRC/27/32.

⁴ The members of the drafting group thank Herman Gill and Joanna Enns of the Osgoode Hall Law School, York University, Toronto, Canada, and Mohammed Mahmood Al Hinai for their valuable research input to the present study.

⁵ A/HRC/AC/13/CRP.2.

comments and inputs on the draft report. In its decision 13/5 adopted at the session, the Committee took note of the draft progress report and requested the drafting group to recirculate the questionnaire prepared earlier in order to further seek the views and inputs of the various stakeholders so as to allow for more informed work. It furthermore requested the drafting group to finalize the draft progress report, taking into account the discussion held at its thirteenth session, and to submit it to the Human Rights Council at its twenty-eighth session.

5. As at November 2014, 12 States, one inter-governmental organization, one special procedure, three national human rights institutions and one non-governmental organization had responded to the questionnaire.⁶

II. Scope of the report

6. Pursuant to Human Rights Council resolution 24/14, the present report focuses on the adverse consequences of unilateral coercive measures on the enjoyment of human rights by the civilian population of targeted States and includes recommendations on the appropriate mechanism that may be used to assess the negative consequences of such measures and to promote accountability. The question of the legality of unilateral coercive measures, therefore, does not fall within the scope of the report. This issue has already been extensively examined in the thematic study of OHCHR on the impact of unilateral coercive measures on the enjoyment of human rights,⁷ and was also a subject of discussion during the two workshops organized by OHCHR in April 2013 and in May 2014 at the request of the Council.⁸

III. Notion of unilateral coercive measures

7. The term "unilateral coercive measures" is a recent one. It has been used broadly to include measures such as "unilateral economic sanctions", "unilateral economic measures" and "coercive economic measures" in various studies on the subject, as well as in United Nations documents and resolutions. To date, the term "unilateral coercive measures" does not seem to have a commonly agreed-upon definition. Despite the intensive discussion that the term has triggered among scholars and within the different bodies of the United Nations in recent decades, the definition used for the term and, particularly the main elements to be used for describing the term, remain elusive in certain respects.

8. The most commonly used definition of the term is "the use of economic measures taken by one State to compel a change of policy of another State".⁹ Some recent studies thereon, however, tend to hold the view that the term "unilateral" may be used in a broader sense to include States, group of States and "autonomous" regional organizations, unless

⁶ Belarus, Colombia, Cuba, Ecuador, Honduras, the Islamic Republic of Iran, Kuwait, Lebanon, Mexico, Qatar, the Syrian Arab Republic, and Trinidad and Tobago; the European Union; the Independent Expert on the promotion of a democratic and equitable international order; Defensoria Pueblo del Estado (Plurinational State of Bolivia), Conseil national des droits humains (Madagascar), and the National Human Rights Institution of Romania; and the Permanent Assembly for Human Rights.

⁷ A/HRC/19/33.

⁸ See presentations and statements made during the workshops available from the OHCHR webpage dedicated to the issue of human rights and unilateral coercive measures.

⁹ See Andreas F. Lowenfeld, *International Economic Law* (Oxford, Oxford University Press, 2002), p. 698.

such measures are authorized under Chapter VII of the Charter of the United Nations.¹⁰ In a recent article, one author stated that "...one can distinguish the unilateral sanctions practice of individual states and organizations – such as the EU, the US, Canada or Japan – from the mandatory sanctions of the [Security Council]".¹¹ This approach to defining unilateral coercive measures currently seems to have, more or less, gained support. Owing to the current increased use of what are referred to as "targeted" or "smart sanctions" employed by States against individuals, groups and/or entities believed to be in a position of power to influence or determine actions in targeted States, defining the term "unilateral coercive measures" should also consider taking these categories of persons or entities into account.

9. On the basis of the above considerations, the working definition of the term "unilateral coercive measures" preferred for the purposes of the present study is "the use of economic, trade or other measures taken by a State, group of States or international organizations acting autonomously to compel a change of policy of another State or to pressure individuals, groups or entities in targeted states to influence a course of action without the authorization of the Security Council".

10. Sanctions, including unilateral coercive measures employed by States, take different forms or a combination of measures, ranging from the restriction or disruption of trade, or financial and investment flows between sender and targeted countries to restrictions on social and cultural exchanges.¹² Most of these categories of sanctions, usually called traditional or comprehensive sanctions, involve coercive measures intended to impose economic pressure on targeted States by preventing them from importing or exporting certain goods and services deemed strategically important, or more specifically target banking and financial sectors of targeted States. "Targeted" or "smart sanctions" are regarded as new forms of coercive measures aimed at applying pressure to persons or entities thought to hold political decision-making power in targeted Governments or persons deemed to engage in terrorism or other forms of violence and whose behaviour is thought to be undesirable from the perspective of the sender State. These sanctions may comprise the freezing of assets or travel bans on individuals, groups or entities in targeted countries; they may also target particular commodities from being exported from targeted States or entering such States (such as diamonds or luxury goods, or arms embargoes).¹³

11. Different sanctions imply a different negative impact on human rights. The motivations for sanctions may vary significantly, and in some case are even used as a geopolitical weapon. It seems almost certain that reshaping local and global markets, destroying competitive economies, challenging sovereign credibility and leadership, endangering conciliatory talk, destabilizing Governments and transforming independent countries into failed States may induce a downturn in global economic growth. Such situations may in turn lead to negative consequences for the livelihood of disadvantaged populations in sanctioned countries, including in the country of origin of the sanctions.

12. Unilateral coercive measures that are comprehensive in nature are intended to cause economic and political hardship for targeted States; they therefore make no real distinction between States and the civilian population, including women and children and other marginalized groups, residing in targeted States, who bear the brunt of such severe

¹⁰ See A/HRC/24/20, para. 11 and the presentation made by Antonios Tzanakopoulos, available on the OHCHR website dedicated to the issue of human rights and unilateral coercive measures.

¹¹ Clara Portela, "The EU's Use of 'Targeted' Sanctions: Evaluating Effectiveness", *EU Foreign Policy*, CEPS Working Document, No.391, 11 March 2014.

¹² For a more detailed description of sanctions, see E/CN.4/Sub.2/2000/33.

¹³ See Bernard Sitt et al., *Sanctions and Weapons of Mass Destruction in International Relations* (Geneva, Geneva Centre for Security Policy, 2010).

economic hardship. Consequently, comprehensive unilateral coercive measures usually have an adverse impact on the enjoyment of human rights by the civilian population of targeted States, disproportionately affecting the poor and vulnerable groups in society, particularly in terms of access to food, health care and basic livelihood, contrary to the political declarations of the initiators and, as such, leading to or constituting the root cause of furthering the encroachment and limitation of and restrictions on numerous human rights and fundamental freedoms enshrined in universal instruments.

13. "Targeted sanctions" are, by contrast, designed to apply economic pressure to selected individuals or entities and may therefore not entail negative consequences for the enjoyment of human rights by the civilian population at large. This by no means implies that targeted sanctions do not give rise to violations of human rights of the individuals or entities targeted, particularly with regard to their civil and political rights.¹⁴ Since comprehensive sanctions are the ones that usually have negative consequences on the enjoyment of human rights by the civilian population of targeted States, however, the present study focuses mainly on such measures.

IV. Negative impact of unilateral coercive measures on the enjoyment of human rights

14. In several resolutions and declarations adopted by United Nations entities human rights bodies, including the Commission on Human Rights, increasing concerns were expressed about the negative impact of sanctions, including unilateral coercive measures, on the enjoyment of human rights, particularly their negative impact on the human rights of the civilian population of targeted States and, even more so, on such vulnerable groups as women, children, older persons and minorities.¹⁵ The Human Rights Council has followed this trend.¹⁶

15. There is general consensus that unilateral coercive measures, particularly those that are comprehensive in nature and manifested in the form of trade embargoes and restrictions on financial and investments flows between sender and target States, may have a serious impact on the enjoyment of human rights by the civilian population in targeted and non-targeted States alike. This is so because economic sanctions in general, including unilateral coercive measures, irrespective of their declared intent (such as preventing gross violations of human rights in targeted States), usually translate into a severe impact on the population at large, and in particular vulnerable groups in the society who become the true victims of such sanction rather than the States or Governments they are supposed to target.¹⁷ In this regard, the Committee on Economic, Social and Cultural Rights, in its general comment No. 8, on the relationship between economic sanctions and respect for economic, social and cultural rights, declared that the inhabitants of a given country do not forfeit basic

¹⁴ See Thomas Biersteker and Sue Eckert, "Addressing Challenges to Targeted Sanctions: An Update of the 'Watson Report'", Watson Institute, Geneva, 2009, and Bardo, Fassbender, "Targeted Sanctions and Due Process: The responsibility of the UN Security Council to ensure that fair and clear procedures are made available to individuals and entities targeted with sanctions under Chapter VII of the UN Charter", study commissioned by the United Nations Office of Legal Affairs, Office of the Legal Council. See also A/HRC/19/33, para. 27.

¹⁵ See General Assembly resolutions 51/103, 52/120, 53/41, 54/172, 66/156, 67/170 and S-27/2, para. 30, and the World Summit Outcome (resolution 60/1), paras. 106 – 110; Subcommission on Human Rights resolution 2000/1; the Beijing Declaration and Platform for Action, para. 145; and Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1997/35.

¹⁶ Resolutions 15/24 and 24/14, and decision 18/120.

¹⁷ See A/50/60-S/1995/1, para. 70.

economic, social and cultural rights by virtue of any determination that their leaders have violated norms of international peace and security.¹⁸ Although this comment seems to apply to sanctions adopted by the Security Council, it applies equally to unilateral coercive measures.

16. Several human rights obligations of States incorporated into the various core international human rights instruments provide limitations on unilateral coercive measures that have an impact on the enjoyment of human rights by the civilian population in targeted States. These include, *inter alia*, the right to life;¹⁹ the right to an adequate standard of living, including food, clothing, housing and medical care;²⁰ and the right to health.²¹ In this regard, the Vienna Declaration and Programme of Action called upon States:

to refrain from any unilateral measures not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among states and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and in international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services.²²

17. Previous studies conducted at the request of the Subcommission on Human Rights and by the Human Rights Council already documented the likely negative impact of unilateral coercive measures on the civilian population of targeted and non-targeted States, and included case studies documenting the impact of such measures. These studies clearly indicated the likely and actual negative impact of unilateral coercive measures on the civilian population, particularly on vulnerable groups, including women, children, the infirm and older persons, as well as the poor, caused by the deprivation of access to basic services, such as life-saving equipment and medication, food, educational equipment and the loss of jobs. They also pointed out that long-term unilateral coercive measures have a more severe negative impact on the economic, social and cultural rights of the affected population enshrined in the core human rights instruments, such as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights.²³

18. In this regard, the presentations made during the workshops organized by OHCHR in April 2013 and May 2014 highlighted some of the negative effects of both multilateral and unilateral coercive measures on the enjoyment of human rights by the civilian population, particularly the disproportionate impact such measures have on women and children. One of the panellists stressed that the impact of unilateral coercive measures was more deeply felt by women and marginalized communities, and that women were the first to lose jobs, to be moved out of higher education, suffer from malnourishment and face food insecurity. He also gave specific relevant examples of the plight of women and children in the Islamic Republic of Iran and Cuba.²⁴ In several of the presentations made at

¹⁸ E/C.12/1997/8, para. 16.

¹⁹ Universal Declaration of Human Rights, art. 3; International Covenant on Civil and Political Rights, art. 6, para. 1; Convention on the Rights of the Child, art. 6, para. 1.

²⁰ Universal Declaration of Human Rights, art. 25, para. 1; International Covenant on Economic, Social and Cultural Rights, art. 11, para. 1; Convention on the Rights of the Child, art. 27, para. 1.

²¹ International Covenant on Economic, Social and Cultural Rights, arts. 11, para. 2, and 12, para. 1.

²² A/CONF.157/23, para. 31.

²³ See A/HRC/27/32. See also footnote 11.

²⁴ Anuradha M. Chenoy, presentation made at the workshop on the various aspects relating to the impact of the application of unilateral coercive measures on the enjoyment of human rights by the affected population in the States targeted, Geneva, 5 April 2013.

the workshop held in May 2014, the negative impact of both multilateral and unilateral coercive measures was unequivocally shown on the enjoyment of human rights in targeted and non-targeted States and, in particular, by women, children, minorities, older persons and persons with disabilities. Panellists cited examples of such impact in States such as Iraq, the Islamic Republic of Iran, the former Yugoslavia, Haiti and Myanmar.²⁵

19. Almost all the responses to the question regarding the impact of unilateral coercive measures on the enjoyment of human rights underlined the fact that such measures often had a negative impact on the civilian population of targeted and non-targeted States and, in particular, on women, children, older persons and persons with disabilities. The examples given by the respondents with regard to the human rights affected by unilateral coercive measures included the rights to life, food, health, work and education, as well as to the right to development. They also pointed out that the negative impact of unilateral coercive measures on targeted States was compounded where such a State was, to a greater degree, economically dependent on the State that imposed the measure.

20. In several studies and reports, attention was drawn to the difficulty of assessing the impact of unilateral coercive measures, particularly those that are comprehensive in nature. They recommended a more robust and independent mechanism to assess and monitor the impact of such measures, including by promoting accountability in this regard.²⁶ Some of the reasons that give rise to this challenge are the restrictions on access to the target country in which sanctions are imposed, and the difficulty to distinguish the negative impact of unilateral coercive measures on the enjoyment of human rights by the affected population when such measures are imposed in conjunction with multilateral sanctions. When considering an appropriate mechanism for the assessment and monitoring of the negative impact of unilateral coercive measures on the enjoyment of human rights, it is hence essential to establish a body that, as far as possible, may have access to targeted States in which human rights are likely to be affected by such measures and with adequate expertise to undertake such a task.

V. Case studies

21. To date, few case studies on the impact of unilateral coercive measures on the enjoyment of human rights by the civilian population in targeted or non-target States have been available. The case studies below, which are well documented, serve to highlight some of the main adverse effects of unilateral coercive measures on the enjoyment of human rights in target and non-targeted States.

A. Cuba

22. The economic sanctions on Cuba were initially imposed by the United States of America in the 1960s, and were subsequently amended by the Cuban Democracy Act of

²⁵ See in particular the presentations made by Haifa Zangana, Dursun Peksen and Sarah Zaidi at the workshop on the application of unilateral coercive measures on the enjoyment of human rights by the affected population, in particular their socioeconomic impact on women and children in States targeted, Geneva, 23 May 2014.

²⁶ See Gary Hautfauer, Jeffrey Schott and Kimberly Elliot, *Economic Sanctions Reconsidered: History and Current Policy*, 2nd ed. (Washington, D.C., Peterson Institute, 1990), pp. 32–33; and Richard Garfield, "The Impact of Economic Sanctions on Health and Well-being", Relief and Rehabilitation Network Paper, Overseas Development Institute, London, 1999.

1992 and the Helms-Burton Act of 1996, as well as other legislative and executive acts. These acts essentially impose an economic, commercial and financial embargo on Cuba.²⁷

23. In the United States, Congress passed the Trade Sanctions Reform and Export Enhancement Act in October 2000. The Act eased somewhat the enforcement of the embargo and allowed the sale of agricultural goods and medicine to Cuba for humanitarian reasons. From 2005 onwards, exports to Cuba were required to be on a cash-in-advance basis, with full payment made before the products were shipped to Cuba; transactions had to be made through banks in a third country. In 2009, the Government of the United States eased the restrictions by allowing the Government of Cuba to pay for food and agricultural products after the shipment was made.²⁸

24. The embargo of the United States on medicines and technologies in Cuba has led to limitations of the enjoyment of human rights by citizens in Cuba. Amnesty International has shown, on the basis of several fact-finding reports, that the embargo had contributed to malnutrition that mainly affected women and children, poor water supply and lack of medicine.²⁹ The United Nations High Commissioner for Human Rights described the effect of the embargo on Cuban people as "disastrous".³⁰ According to the American Association for World Health, which conducted a detailed health survey in Cuba, the embargo on food and the de facto embargo on medical supplies had wreaked havoc with the island's model primary health-care system.³¹

25. According to the United Nations Children's Fund (UNICEF), Cuba is unable to import nutritional products intended for children and for consumption in schools, hospitals and day-care centres.³² In addition, food shortages are linked to a devastating outbreak of neuropathy numbering in the tens of thousands. By one estimate, daily caloric intake dropped by 33 per cent between 1989 and 1993.³³

26. The embargo also restricts the State's access to water treatment chemicals and spare parts for the island's water supply system. This has led to serious cutbacks in the supply of safe drinking water, which in turn has become a factor in the rising incidence of morbidity and mortality rates due to water-borne diseases.

27. Access to essential medicines and equipment has also been affected by the sanctions. Of the 1,297 medications still available in Cuba in 1991, physicians now have access to only 889, and many only occasionally. Because most major new drugs are developed by United States pharmaceutical companies, Cuban physicians have access to less than 50 per cent of the new medicines available on the world market. Owing to the direct or indirect effects of the embargo, the most routine medical supplies are in short supply or entirely absent from some Cuban clinics.³⁴ In the case of patients with psychiatric disorders,

²⁷ For more details on economic sanctions imposed by the United States of America on Cuba, see Benjamin Manchak, "Comprehensive economic sanctions, the right to development, and constitutionally impermissible violations of international law", *Boston College of Third World Law Journal*, vol. 30, No. 2 (2010), pp. 421–424.

²⁸ Amnesty International, *The US Embargo against Cuba: Its Impact on Economic and Social Rights*, 2009.

²⁹ *Ibid.*

³⁰ A/HRC/4/12, para. 7.

³¹ American Association for World Health, *The Impact of the U.S. Embargo on Health and Nutrition in Cuba*, March 1997, p. 16.

³² *Ibid.*

³³ Maria C. Werlau, "The Effects of the U.S. Embargo on Health and Nutrition in Cuba: A Critical Analysis", *Cuba in Transition*, 1998.

³⁴ *Ibid.*

advanced drugs are also not available. The embargo imposed against Cuba not only affects the supply of medicine. Health services depend on functioning water and sanitation infrastructure, electricity and other equipment, such as X-ray equipment and refrigerators to store vaccines. The embargo has also slowed down the renovation of hospitals, clinics and care centres for older persons.³⁵

28. According to the Government, the State is forced to pay above-market prices and tariffs on goods purchased and shipped from distant markets, while the blockade imposes difficult terms on credit and trade and blocks access to many goods and technologies. It is estimated that the embargo on Cuba creates a virtual tax of 30 per cent on all imports.³⁶

B. Zimbabwe

29. The European Union imposed sanctions on Zimbabwean leaders in 2002. The sanctions include, inter alia, targeted sanctions in the form of a travel ban and asset freeze on members of the Government and persons and entities associated with it. The motivation of the sanctions had its origins in the agrarian reform begun by President Mugabe in 2000/01, which entailed the expropriation of land from white farmers, and which was accompanied by a wave of political violence and the intimidation of the opposition.³⁷

30. The country's population of 13 million people has suffered from the sanctions. Poverty and unemployment rates are high, while infrastructure is sorely lacking. Diseases such as HIV/AIDS, typhoid and malaria give the country an average life expectancy of between 53 to 55 years. The country is rich in minerals, but this has been translated into neither sustainable economic growth nor prosperity for its people.

31. In a report published in 2010, UNICEF found that some 34 per cent of children under 5 were underdeveloped, 2 per cent were stunted and 10 per cent underweight. Zimbabwe has one of the highest rates of orphaned children in the world (25 per cent of all children), and experience of violence and abuse is widespread. At least 21 per cent of the first sexual encounter experienced by girls is forced, and the perception that family violence is acceptable is shared by both women and men (48 and 37 per cent, respectively). Corporal punishment is legally administered. Two-thirds of children report experiencing such punishment at school. The combination of poverty, neglect and violence contributes to the large number of children on the move, resulting in unsafe migration and child exploitation.³⁸

C Islamic Republic of Iran

32. Acting through the Security Council and regional or national authorities, the United States of America, the States members of the European Union, Japan, the Republic of Korea, Canada, Australia, Norway, Switzerland and others have put in place a strong interlocking matrix of sanctions and measures relating to the nuclear, missile, energy, shipping, transportation and financial sectors of the Islamic Republic of Iran.

³⁵ Amnesty International, *The US Embargo against Cuba* (see footnote 28).

³⁶ Richard Garfield and Arah Santana, "The Impact of the Economic Crisis and US Embargo on Health in Cuba", *American Journal of Public Health*, vol. 87, No.1 (January 1997), pp. 15–20.

³⁷ C. Portela, "The EU's Use of 'Targeted' Sanctions" (see footnote 11).

³⁸ UNICEF Annual Report for Zimbabwe, available from www.unicef.org/zimbabwe/Zimbabwe2010_Annual_Report_Sept_2011.pdf.

33. According to a non-profit organization based in the United States, smart sanctions imposed on the banking, gas and insurance sectors have wreaked havoc with the lives of many Iranian citizens, as price hikes have led to the high cost of food (increases by 1,500 per cent in the period 2010–2012). Besides strengthening the black cash economy and increasing criminalization, women's access to higher education has decreased. Women are being pushed out of the job market. Furthermore, the sanctions have triggered a collapse in industry, skyrocketing inflation and massive unemployment. The country's middle class has disappeared, and even access to food and medicine has been compromised.³⁹

34. Although the United States of America and the European Union claim that the sanctions do not apply to humanitarian items, in actual fact they have deeply affected the delivery and availability of medical supplies. The import of medicines containing antibiotics (of types not produced inside the country) has decreased by 20.7 per cent, and prices have increased by more than 300 per cent. The estimated 20,000 persons suffering from thalassemia in the country receive only a few days of their monthly medicinal needs. Survivors of chemical weapons used during the war with Iraq in the 1980s, in need of medicine and equipment, including cornea transplants and inhalers, similarly suffer from a shortage or lack of medical supplies. In general, the medicines used to treat haemophilia, cancer, thalassemia, multiple sclerosis and kidney transplant and dialysis are not produced domestically, and of those that are, most are not as effective as those imported from Europe and North America. The shortage of medicine for such chronic diseases often leads to the death of the patient. In addition, every year, 85,000 Iranians are diagnosed with some form of cancer; the facilities for providing them with chemotherapy and radiotherapy are however scant. While the financial sanctions imposed on the Islamic Republic of Iran do not, in principle, cover medicine and medical equipment, they make it almost impossible for Iranian importers to finance the import of medical equipment and medicine. In particular, depriving the country of SWIFT services has made international payments to Western companies almost impossible. As a result, Western pharmaceutical companies – often the sole producers of these medicines – have all but stopped exporting to the Islamic Republic of Iran, and every year tens of thousands of patients die as a result. The economic sanctions have therefore led to a deterioration in living conditions. Those living in poverty and in marginalized areas suffer most from the effect of the sanctions.⁴⁰

35. According to the UNICEF annual report of 2012, the mortality rate of children under 5 years of age dropped from 36 to 22.52 per 1,000 live births between 2000 and 2010. Nonetheless, 20.3 out of 1,000 children die before their first birthday, and 15.29 during the first month of life – statistics that highlight the need to improve neonatal health care. The report also revealed that the average under-5 mortality rate in lower income regions is three times that of higher income regions.

36. Owing to the imposition of both multilateral and unilateral sanctions on the Islamic Republic of Iran, it is difficult to distinguish the specific impact that unilateral sanctions have had on the enjoyment of the human rights by the civilian population.

D. Gaza Strip

37. While according to international law the 1.7 million inhabitants of the Gaza Strip are under Israeli occupation, the Government of Israel treats this area as a foreign entity, submitting its inhabitants to a severe financial and economic blockade.

³⁹ International Civil Society Network, "What the Women Say: Killing Them Softly: the Stark Impact of Sanctions on the Lives of Ordinary Iranians", Brief 3, July 2012.

⁴⁰ Ibid.

38. During the 52 days of fighting in July and August 2014, Israeli bombs destroyed or severely damaged more than 53,000 houses in the Gaza Strip. The ongoing blockade violates the social, economic and cultural rights of the people suffering from the unilateral sanctions. Undernourishment is rampant, especially among children. Tens of thousands of families live in the ruins of their houses or in unheated containers furnished by the local authorities. In December 2014, the death from cold of a number of children under the age of 10 was reported to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

39. According to numerous reports of the United Nations and non-governmental organizations, the lack of clean drinking water in the Gaza Strip has caused kidney disease to spread, affecting severely the health of hundreds of thousands of people.

E. Impact of unilateral coercive measures on third States: the case of Pakistan

40. More recently, unilateral sanctions on the Islamic Republic of Iran, which have been revised and enforced over time, have negatively affected non-targeted neighbouring States, such as Pakistan, by blocking a gas pipeline project critical for Pakistan to overcome its grave energy crisis.⁴¹ Industrial development in Pakistan has in fact been depressed since industries highly dependent on electricity and gas began to face supply shortfalls. The result has been a rising unemployment rate in a predominantly young population, with severe consequences for the economy and society, and most importantly the individuals affected. Moreover, endemic load-shedding across the country lasting up to 18 hours daily has led to violence in the form of frequent energy riots.⁴² The energy crisis is thus hindering the progressive realization of the socioeconomic rights of the citizens of Pakistan in addition to compromising their rights to security of life and property.

41. To meet its energy shortages, the Government of Pakistan signed a multi-billion dollar agreement for the supply of 750 million cubic feet of gas per day, extendable to one billion cubic feet gas per day, through a pipeline from the Islamic Republic of Iran.⁴³ This would ease the gas deficit in the country to a reasonable level and help to curb rising inflation. The gas pipeline project, however, came to a halt as a direct consequence of the unilateral sanctions imposed by the United States of America on the Islamic Republic of Iran.⁴⁴ Failure to complete the project within the stipulated time frame would make Pakistan liable for \$3 million a day in penalties. Significantly, a State already burdened with international and local loans could hardly afford such additional financial burdens.

42. Failure to complete the project would clearly have an adverse impact on the human rights of citizens of Pakistan, including, inter alia, their rights to life, food, health, development, education and employment, as well as national socioeconomic growth. These

⁴¹ Ahmed Faraz Khan, "Power shortage leads to 12–18 hours of loadshedding", *Dawn*, 11 April 2014.

⁴² See "Power riots: Wapda Complex attacked for loadshedding", *Express Tribune*, 9 April 2013, and "Another day of outrage at outages across Punjab", *Dawn*, 18 June 2012.

⁴³ Zafar Butta, "IPgas pipeline: Iran wants assurance that Pakistan is 'all in'", *Express Tribune*, 25 November 2013.

⁴⁴ Although under United States law the sanctions on the Islamic Republic of Iran have been in place for longer, the Iranian entity with whom the Inter-State Gas System of Pakistan entered into the gas purchase agreement was specifically sanctioned on 24 September 2012, that is, after Pakistan had signed the agreement. Thereafter, Pakistan has expressed reservations at the impact of sanctions on the project. See "Pakistan may face sanctions over gas pipeline with Iran: US", *Times of India*, 4 October 2013.

fundamental rights are guaranteed to the citizens of Pakistan by international treaties, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

VI. Potential mechanisms to assess the negative impact of unilateral coercive measures and to promote accountability

43. In exploring the mechanisms that can be used to assess the negative impact of unilateral coercive measures and/or to mitigate their adverse impact on human rights, it is essential to point out from the outset that the possible mechanisms considered in the present study would, for obvious reasons, be focused on the relevant human rights bodies because of their greater and more specialized expertise in human rights. The human rights bodies were specifically established with the aim of promoting and protecting all human rights, as well as to ensure that human rights obligations incorporated into international human rights instruments and those assumed by States are respected.

44. Accordingly, non-human rights oriented bodies, such as the World Trade Organization, are excluded from the scope of the present study since their mandate is not directly related to the promotion of human rights.⁴⁵ The General Assembly and the Security Council may be considered potential mechanisms for this purpose given that they have frequently dealt with the potential impact of sanctions on human rights, including unilateral coercive measures. However, neither body seems to be an appropriate mechanism, since they are more political and their experience to date reflects difficulties in balancing unilateral coercive measures with human rights.⁴⁶

45. In general, United Nations human rights bodies may be categorized into two broad types: treaty-based bodies, on the one hand, and their Charter-based counterparts, on the other. The relevant treaty-based bodies include the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee.⁴⁷ The Charter-based bodies include the Human Rights Council and its mechanisms and procedures, such as the universal periodic review mechanism, the complaint procedure and the special procedures.

46. Owing to the multiplicity of treaty-based and Charter-based human rights bodies and their different characteristics and mandates, it would be necessary to examine further some of the main considerations, challenges and opportunities that may be taken into account in identifying the most suitable candidate to take on the role of assessing the adverse impact of unilateral coercive measures on the enjoyment of human rights and to promote accountability in this regard.

A. Challenge of territorially and jurisdictionally limited obligations

47. Given that unilateral coercive measures are imposed by one State on another or against persons of another State, one issue that arises is whether treaty-based bodies would

⁴⁵ See Tilahun Weldie Hindeya, "Unilateral trade sanctions as a means to combat human rights abuses: legal and factual appraisal", *Mizan Law Review*, vol. 7, No.1 (2013), pp. 108–116.

⁴⁶ See Sokol Braha, "The Changing Nature of U.S. Sanctions against Yugoslavia", *Michigan State University Journal of International Law*, No. 8 (1999), p. 273.

⁴⁷ See Philip Alston and Ryan Goodman, *International Human Rights* (New York, Oxford University Press, 2013), pp. 691–693.

be suitable as a mechanism of choice for assessing and/or promoting accountability with regard to unilateral coercive measures that adversely affect the enjoyment of human rights. Generally, the obligations assumed by State parties to almost all human rights treaties are framed in a rather narrow manner; for instance, State parties to the International Covenant on Civil and Political Rights undertake to ensure the enjoyment of all rights contained in the Covenant for all individuals and peoples within their territories or subject to their jurisdiction (art. 2). Articles 2 to 4 of the International Convention on the Elimination of All Forms of Racial Discrimination limit the obligations of State parties in a similarly narrow territorial and jurisdictional manner. The Convention on the Elimination of All Forms of Discrimination against Women (art. 2) and the Convention on the Rights of the Child (art. 2) follow the same pattern. Article 2 of the International Covenant on Economic, Social and Cultural Rights describes the obligations assumed by State parties in a more or less similar fashion, with the exception that the obligations to ensure the enjoyment of human rights by individuals within the territory of a State subject to its jurisdiction is modified by the obligation of the relevant States parties to engage in "international assistance and cooperation" towards the achievement of that goal. Whether or not a State is legally (as opposed to morally) obliged to help to ensure the enjoyment of socioeconomic and cultural rights in another State is, however, still a subject of controversy.⁴⁸

48. The foregoing discussion tends to suggest that the territorial and jurisdictional mandates conferred to treaty-based bodies within their respective treaties is framed quite narrowly and does not seem to extend to victims of the adverse impact of unilateral coercive measures who usually do not reside within the territory or are subject to the jurisdiction of the State imposing the measures challenged. This begs the question as to how such treaty-based bodies could procedurally entertain petitions of individuals or groups who claim to have been victim of human rights violations when such persons are outside the territory or jurisdiction of the State against which they are bringing the complaint. It may be argued, however, that the obligations of State parties to ensure the enjoyment of human rights by all individuals and peoples within their territory or those subject to their jurisdiction could be read more flexibly in order to accommodate the ability of the relevant treaty-based bodies to entertain claims lodged against State parties by persons outside the territory of such States or normally regarded as being outside their jurisdiction.⁴⁹ In this instance, the phrase "within its jurisdiction", found in almost all of the treaties, may be interpreted to include any person against whom the State has taken measures, including unilateral measures, that may affect their human rights. Even such interpretive manoeuvre is, however, subject to significant controversy.⁵⁰

49. It should be noted, however, that a treaty body may require State parties to include in their periodic State reports information on how unilateral coercive measures that they have taken may have violated the human rights of persons who are outside their territory or jurisdiction, or on measures, if any, taken to assess or mitigate such adverse effects. Moreover, past experience has shown that treaty bodies have an indirect way of exercising their jurisdiction through the adoption of general comments. Even then, the issue of the territorial and jurisdictional limits of treaty bodies may pose a challenge.

⁴⁸ With regard to the debate on the ways and means of ensuring the enjoyment of the right to development, see Obiora Chinedu Okafor, "A regional perspective: article 22 of the African Charter on Human and Peoples' Rights" in *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development* (Geneva and New York, OHCHR, 2013), p. 373.

⁴⁹ See Hugh M. Kindred et al., *International Law: Chiefly as Interpreted and Applied in Canada*, 7th edition (Toronto, Emond Montgomery, 2006), pp. 431 and 547.

⁵⁰ Ibid.

50. What the above discussion shows is that, in the process of identifying appropriate mechanisms to assess and/or to promote accountability to mitigate the effects of unilateral coercive measures on the enjoyment of human rights, efforts should, at a minimum, be made to avoid, or at least to minimize, any potential controversy regarding the limits of the territorial and jurisdictional mandate of the treaty bodies. One obvious way of doing this would be to eschew the treaty bodies as the mechanism of choice for the task.

51. This would lead to the consideration of the Charter-based bodies as the more preferable mechanisms of choice to undertake the assessment and/or to promote accountability to mitigate the adverse impact of unilateral coercive measures on the enjoyment of human rights, since the mandates of these bodies are formulated in a more flexible manner. This stems from the fact that the Charter of the United Nations, the source from which the Charter-based bodies ultimately derive their mandates, calls for all States Members to pledge to take joint and separate action to achieve universal respect for, and observance of, human rights and fundamental freedoms for all without distinction to race, sex, language and religion (Arts. 55 and 56). The language used is clearly more flexible and better avoids potential controversy with regard to jurisdiction, which could be used to distract and even impede the assessment of unilateral coercive measures and their impact on the enjoyment of human rights.

B. The accountability imperative

52. The fact that States that impose unilateral coercive measures with an impact on the enjoyment of human rights of the civilian population of targeted or non-targeted States ought to be accountable in some way for their actions is a matter beyond debate. Indeed, the entire human rights system would be much weaker were accountability of one kind or another not one of its main goals, without which the entire human rights system would lose its rationale. For instance, in the area of addressing poverty reduction and the right to development, which has historically witnessed one of the largest accountability gaps in the broader field of human rights, the creation of institutions that ensure accountability has been deemed imperative. Indeed, the key documents that will shape the post-2015 development agenda have called for development efforts to be driven and shaped by building "accountable institutions for all,"⁵¹ and further emphasized the need to establish "a participatory monitoring framework for tracking progress" and "mutual accountability mechanisms for all stakeholders".⁵² According to a working paper prepared for the Commission on Human Rights, the full array of legal remedies should be available for victims of sanctions regimes at any point for the violation of international law, notably national courts, international or regional human rights bodies and the International Court of Justice.⁵³

53. All United Nations human rights bodies, be they treaty-based or Charter-based, suffer to a similar degree from a lack of a supranational authority that can enforce their demands on States that have allegedly violated their human rights obligations.⁵⁴ All of these bodies exact accountability in a similarly "softer way", primarily through a slower, more

⁵¹ See United Nations, *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development*. Report of the High-level Panel of Eminent Persons on the Post-2015 Development Agenda (New York, 2013).

⁵² A/68/202, para. 75.

⁵³ E/CN.4/Sub.2/2000/33, para. 106.

⁵⁴ See O.C. Okafor, *The African Human Rights System, Activist Forces and International Institutions* (Cambridge, Cambridge University Press, 2007), pp. 40–61.

consensual process of socialization, and sometimes, ostracization.⁵⁵ Rarely is a State punished for its human rights violations in the way that violations are sanctioned in the domestic legal system.⁵⁶

54. Although the choice between a Charter-based or treaty-based mechanism is not clear-cut when considering accountability for unilateral coercive measures that have an adverse impact on the enjoyment of human rights, the universal periodic review may be better suited to ensuring accountability at the global level since it targets each and every State Member of the United Nations throughout each four-year cycle.

C. Access to independent evidence

55. Another important consideration when selecting the best-suited mechanisms for the assessment and/or mitigation of the adverse effects of unilateral coercive measures on the enjoyment of human rights is the extent to which that body would have access to robust or direct independent evidence. The special procedures of the Human Rights Council do in fact enjoy such an advantage over other mechanisms, since they are often able to undertake on-site visits to the relevant States and territories.

D. Consideration of financial and administrative efficiency

56. The United Nations system is currently striving to be as financially and administratively efficient and cost-effective as possible without significantly cutting down its relevant programmes. This consideration suggests that a multiplicity of mechanisms to take on the task of assessing and promoting accountability for the negative impact of unilateral coercive measures should be avoided. A single Charter-based or treaty-based body ought therefore to be considered the mechanism of choice for the task at hand.

E. Need to secure the most appropriate expertise

57. Given the fact that unilateral coercive measures of a comprehensive nature are more likely to have an adverse impact on the enjoyment of economic and social rights, especially in relation to women, children and other vulnerable groups in targeted States (also emphasized by the Human Rights Council in its resolution 24/14), the mechanism of choice may need to be a body or a person with the requisite expertise in the area of economic and social rights. In the context of treaty-based bodies, this would point to three specific bodies that could perform the task jointly, namely, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. Financial and administrative considerations might, however, militate against this more cumbersome route, where multiple mechanisms would be involved in looking at the adverse impact of unilateral coercive measures on human rights. This would once again suggest a Charter-based option, such as the appointment of a special procedure by the Human Rights Council. The selection process of the appropriate mandate holder would moreover provide the Council with more flexibility when identifying the person it considers best suited for the position, with adequate expertise in the areas identified.

⁵⁵ Ibid. See also Ryan Goodman and Derek Jinks, "How to Influence States: Socialization and International Human Rights Law", *Duke Law Journal*, vol. 54, 2004, p. 7.

⁵⁶ Ibid.

F. Minimizing politicization

58. The issue of the imposition of unilateral coercive measures is directly tied to global politics and the challenge that is posed to the multilateral ideal by the actions of many States.⁵⁷ For the mechanism eventually selected to perform the task to gain the most popular legitimacy and effectiveness, preference should be given to one that has the potential to minimize the politicization of the issue. With a few exceptions, both treaty-based and Charter-based bodies are designed to be as non-political as possible and therefore do not enjoy any specific advantage in this respect.

VII. Concluding remarks and recommended actions

59. The fact that unilateral coercive measures are likely to have a negative impact on the enjoyment of human rights by the civilian population of targeted and, in some cases, non-targeted States does not seem to be a matter of controversy. However, assessing the impact of unilateral coercive measures on the human rights of the civilian population, and more particularly, on vulnerable groups, such as women and children, would require on-site visits to the States affected by such measures to verify, in an independent manner, the actual effects of such measures on the different segments of the population.

60. One obvious conclusion of the discussions above is that this function should squarely rest on one of the relevant human rights mechanisms, namely, either a treaty-based or a Charter-based mechanism. The challenge faced by treaty-based bodies in discharging this function is the narrow territorial and jurisdictional manner in which the obligations of States are framed in the relevant treaties. For this reason, Charter-based bodies, which tend to have a more flexible mandate, are to be preferred for the task.

61. Almost all of the factors considered for selecting the most appropriate mechanism for the assessment of the adverse effect of unilateral coercive measures on the enjoyment of human rights seem to lead to the conclusion that a special procedure should be established to undertake the task. The need for the selected mechanism to have as much direct access as possible to robust and independent evidence, to align with the United Nations administrative and financial efficiency goals, and to have a great degree of flexibility to select and deploy the most appropriate technical expertise in the area would indeed tend to point to the creation of a special procedures mandate by the Human Rights Council.

62. Almost all of the stakeholders who responded to the questionnaire were also of the view that the most appropriate mechanism for assessing the negative impact of unilateral coercive measures on the enjoyment of human rights should be a special procedure mandate, although some stated that the establishment of a world court on human rights might be more appropriate. The European Union did not consider the Human Rights Council to be the appropriate forum for addressing the issue.

63. With regard to the promotion of accountability for the negative impact of unilateral coercive measures on the enjoyment of human rights, the most appropriate

⁵⁷ See Christine Chinkin, "The State that acts alone: bully, good Samaritan or iconoclast?", *European Journal of International Law*, vol. 11, No. 1 (2000), p. 31; and Alberto R. Coll, "Harming human rights in the name of promoting them: the case of the Cuban embargo", *UCLA Journal of International Law and Foreign Affairs*, vol. 12, No. 2 (2007), p. 199.

means to hold States to account would seem to be the use of the universal periodic review mechanism and for the relevant treaty-based bodies to require Member States to address the issue in their periodic reports so as to raise public awareness to pressure States to prevent or, at least, to mitigate the impact of such measures on the enjoyment of human rights. There may also be a need for the Human Rights Council to consider developing specific rules, procedures and guidelines to ensure transparency and more accountability if and when States employ unilateral coercive measures that are likely to have a negative impact on the enjoyment of human rights in targeted or non-targeted States.

64. In this regard, the Human Rights Council, at its twenty-seventh session, in fact adopted resolution 27/21, in which it created, for a period of three years, a new mandate of Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, thus corroborating the findings of the present study. The Special Rapporteur has a mandate:

(a) To gather all information, wherever it may occur, including from Governments, non-government organizations and any other parties, relating to the negative impact of unilateral coercive measures on the enjoyment of human rights;

(b) To study trends, development and challenges in relation to the negative impact of unilateral coercive measures on the enjoyment of human rights and to make guidelines and recommendations on ways and means to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights;

(c) To make an overall review of independent mechanisms to assess unilateral coercive measures to promote accountability;

(d) To contribute to strengthening the capacity of OHCHR to provide affected countries with technical assistance and advisory services to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights.

65. In discharging the mandate, the Council also requested the Special Rapporteur (a) to draw the attention of the Human Rights Council and the High Commissioner to situations and cases regarding the negative impact of unilateral coercive measures on the full enjoyment of human rights; and (b) to cooperate with other relevant United Nations bodies, including the High Commissioner, human rights treaty bodies, the special procedures and mechanisms, specialized agencies, fund and programmes, regional intergovernmental organizations and their mechanisms, with the aim to prevent, minimize and redress the adverse impact of unilateral coercive measures on human rights.

66. The specific mandates and tasks assigned to the Special Rapporteur by the Human Rights Council in resolution 27/21 are consistent with what has already been recommended by the Advisory Committee in its progress report, and should therefore be commended. It is now important to ensure that all relevant United Nations human rights treaty bodies and subsidiary organs of the Council mainstream the issue of the negative impact of unilateral coercive measures on the enjoyment of human rights and perform specific monitoring activities, such as during the review of periodic reports submitted by States to such bodies and under the universal periodic review, and draw the attention of the Special Rapporteur to any potential or actual violation of human rights that may occur as a result of the application of unilateral coercive measures. Furthermore, it would also be necessary to develop quantitative and qualitative indicators that would allow a comparison between the situation of human rights in targeted and non-targeted States prior to and during the imposition of unilateral coercive measures.



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Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

Human rights bodies and mechanisms

Report of the Human Rights Council Advisory Committee on the study on the situation of human rights of persons living with albinism

GE.15-02217 (E)



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I. Background

1. In three recent seminal resolutions,¹ the Human Rights Council expressed its concern about the situation of the human rights of persons with albinism. In the first resolution, adopted in June 2013, it condemned attacks against persons with albinism and requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to submit, at its twenty-fourth session in September 2013, a preliminary report on the ongoing attacks and discrimination against persons with albinism.²

2. In the second resolution, adopted in September 2013, the Council requested the Advisory Committee to prepare a study on the situation of human rights of persons with albinism and submit a report thereon to the Human Rights Council at its twenty-eighth session.³

3. In its third resolution, adopted in June 2014, the Human Rights Council recommended that the General Assembly proclaim 13 June International Albinism Awareness Day. On 18 November 2014, the General Assembly took note of the Council's recommendation and decided to proclaim 13 June as International Albinism Awareness Day, with effect from 2015.⁴

4. In accordance with its mandate pursuant to Council resolution 24/33, the Advisory Committee, at its twelfth session in February 2014, established a drafting group tasked with the drafting of the report and designated the following experts as members of the drafting group: Mohamed Al Faihani, Laurence Boisson de Chazournes (Rapporteur), Mario Luis Coriolano, Latif Hüseyinov, Kaoru Obata and Obiora Chinedu Okafor (Chairperson).

5. The Committee also decided to seek views and input from States and other stakeholders and, to that end, prepared a questionnaire requesting information on the status and treatment of persons with albinism around the world, which was disseminated in April 2014 to States, relevant special procedures, OHCHR field presences, national human rights institutions and non-governmental organizations. A total of 41 responses were received, including 15 from States: Azerbaijan, Burundi, Chile, Denmark, Georgia, Germany, Luxemburg, Mexico, Nicaragua, Paraguay, Senegal, Slovenia, Spain, Swaziland and Tunisia; 9 from national human rights institutions in the following countries: Bosnia and Herzegovina, Denmark, Malawi, Namibia, the Netherlands, Nicaragua, Romania, Rwanda and South Africa; 10 from the following non-governmental organizations: Amis des Etrangers au Togo; Bien-Être des Albinos de Côte d'Ivoire; the Elgon Foundation for Persons with Albinism (Uganda); the Uganda Albinos Association; the Albino Foundation (Nigeria); the Chinese Organization for Albinism; ALBA – Asociación española de ayuda a personas con albinismo (Spain); Genespoir (France); the Albinism Fellowship of Australia; and NOAH Albinismus Selbsthilfegruppe (Germany); and 7 from OHCHR, treaty monitoring bodies and special procedures: OHCHR in Occupied Palestinian Territory; OHCHR Regional Office for Southern Africa; OHCHR/United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO);

¹ See Human Rights Council resolution 23/13 on attacks and discrimination against persons with albinism; Human Rights Council resolution 24/33 on technical cooperation for the prevention of attacks against persons with albinism, and Human Rights Council resolution 26/10 on International Albinism Awareness Day.

² Report of the Office of the United Nations High Commissioner for Human Rights on Persons with albinism, 12 September 2013 (A/HRC/24/57), ("the OHCHR report").

³ Human Rights Council resolution 24/33, para. 1.

⁴ See A/C.3/69/L.35/Rev.1.

OHCHR/Opération des Nations Unies en Côte d'Ivoire (ONUCI); OHCHR/United Nations Integrated Peace Building Office in the Central African Republic (BINUCA) (relating to Burundi); the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; and the Special Rapporteur on extrajudicial, summary or arbitrary executions.

6. Building on the facts and findings contained in the OHCHR report, the present study first provides an overview of the various obstacles faced by persons with albinism to the full enjoyment of their human rights, and includes the type and severity of the human rights violations involved. Second, it summarizes actions taken at the international level and by OHCHR in response to the issue. The third and final part recommends further initiatives for addressing some of the key problems identified in the first part.

7. On 24 September 2014, the Rapporteur of the Advisory Committee's drafting group participated in an expert meeting on albinism organized by OHCHR in collaboration with the Organisation Internationale de la Francophonie. The meeting brought together experts from international and regional human rights mechanisms and participants from civil society. It was an opportunity to hear the testimonies of persons with albinism and to listen to their proposals on the way forward at the domestic, regional and international levels. The present study has benefited greatly from the expert meeting.

II. Albinism, special needs and human rights challenges

A. Albinism and special needs

8. Albinism is a rare, non-contagious, genetically inherited difference present at birth. In almost all types of albinism, both parents must carry the gene for it to be passed on, even if they do not have albinism themselves. The condition is found in both sexes regardless of ethnicity and in all countries of the world. Albinism results in a lack of pigmentation (melanin) in the hair, skin and eyes, causing vulnerability to the sun and bright light. As a result, almost all people with albinism are visually impaired and are prone to developing skin cancer. There is no cure for the absence of melanin that is central to albinism.⁵

9. While numbers vary, it is estimated that in North America and Europe 1 in every 17,000 to 20,000 people have some form of albinism. The condition is much more prevalent in sub-Saharan Africa, with estimates of 1 in 1,400 people being affected in Tanzania⁶ and prevalence as high as 1 in 1,000 reported for select populations in Zimbabwe and for other specific ethnic groups in Southern Africa.⁷

10. Persons with albinism have special needs. An advocacy report of the International Federation of the Red Cross and Red Crescent Societies (IFRC) identified those needs as follows:

- (a) Security;

⁵ The definition of albinism comes from A/HRC/24/57, para. 10.

⁶ Under the Same Sun, "Frequency of Albinism/Rates of Occurrence: North America, Europe, Africa and Tanzania"; see also, Under the Same Sun, available from <http://www.underthesamesun.com/sites/default/files/Frequency%20of%20Albinism.pdf>; and "Children with Albinism & the Right to Health, summary report on Tanzania with implication for other parts of sub-Saharan Africa" (2012), p. 2, available from <http://www.ohchr.org/Documents/Issues/Children/Study/RightHealth/UndertheSameSun.pdf>.

⁷ World Health Organization, Epidemiologic data on albinism from a public survey in African countries, 2006.

- (b) Help with reintegration into society after displacement or time spent in hiding;
- (c) Health education on how to prevent skin cancer;
- (d) Protective clothing;
- (e) Optician services;
- (f) Assistance in participating in mainstream primary and secondary education;
- (g) Vocational training to maximize the chance of indoor work out of the sun.⁸

11. While the IFRC report focused on the Great Lakes region of east Africa, those needs, or at least some of them, may be considered to reflect the collective experience of persons with albinism.

B. Rights to life and security of person

12. With respect to security, grave concern has been expressed by the Human Rights Council about "attacks against persons with albinism, including against women and children, which are often committed with impunity."⁹ Such attacks involve the violation of fundamental human rights.

13. As mentioned by six special procedure mandate-holders, persons with albinism face dehumanization because they "are regarded as ghosts and not human beings who can be wiped off the global map ... [they are] the target of many false and harmful myths in several countries, especially in the African region."¹⁰

14. The OHCHR report states that "in some communities, erroneous beliefs and myths, heavily influenced by superstition, put the security and lives of persons with albinism at constant risk. These beliefs and myths are centuries old and are present in cultural attitudes and practices around the world."¹¹ The belief that the body parts of persons with albinism possess magical powers that can be used to gain wealth and prosperity and/or to gain power via winning elections are some of the reasons for the killing of, and attacks against, persons with albinism.

15. Violence against this vulnerable group takes various forms, including the killing of, and attacks against, persons with albinism with a view to using their body parts for ritual purposes. Arising from the attacks and the use of body parts is the trade of organs linked to trafficking in persons and the sale of children, infanticide and abandonment of children.¹²

16. It is reported that, as of October 2014, over 340 attacks against persons with albinism, including 134 killings, have been recorded in 25 countries.¹³ Non-governmental organizations working in the field note that the number of ongoing attacks is higher than

⁸ International Federation of Red Cross and Red Crescent Societies, "Through albino eyes: the plight of albino people in Africa's Great Lakes region and a Red Cross response" (2009), p. 17.

⁹ Human Rights Council resolution 24/33, preamble.

¹⁰ Press release by several special procedure mandate-holders, "Not ghosts, but human beings ... persons with albinism" (4 May 2013), available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13294&LangID=E.

¹¹ A/HRC/24/57, para. 15.

¹² Ibid., para. 18.

¹³ See Under The Same Sun, "Reported attacks of persons with albinism (PWA), Summary", available from www.underthesamesun.com/sites/default/files/Attacks%20of%20PWA%20-%201%20page_0.pdf.

that reported, but that data-gathering is difficult owing to the secretive nature of witchcraft, which serves as the context of most ritual attacks against persons with albinism.

17. On 15 May 2014, the former United Nations High Commissioner for Human Rights issued a press statement in which she called for increased protection for people with albinism after the murder of a 40-year-old woman with albinism in north-western Tanzania three days earlier. On 27 May 2014, the Working Group on the Rights of Older Persons and People with Disabilities in Africa also issued a press statement condemning that specific killing.

18. Since then, seven further attacks have been documented in Tanzania, between August 2014 and January 2015, including one murder, two cases of survivors with severe limb mutilation and the disappearance of a 4-year-old girl. The killing of a 25-year-old woman was reported in Malawi in November 2014 and another killing, of a 27-year old man, was reported in Burundi in December 2014. The circumstances in which the attacks took place reveal the severity of attacks against the group. The following are some examples:

(a) On 5 August 2014, Pendo Sengerema, a 15-year-old girl, was brutally attacked at her home in Kaliua District, in the Tabora Region of Tanzania. Three assailants with machetes hacked off her right arm just below the elbow. According to reports, her family could not scream for help as they were threatened with death by the attackers, who later disappeared with Pendo's arm;

(b) On 16 August 2014, two unidentified men entered the home of Munghu Masaga, a 35-year-old woman with albinism and the mother of seven children, in Buhekela village, in Igunga District, also in Tabora region of Tanzania. Before chopping off her left arm and escaping, attackers killed Munghu's husband as he tried to protect his wife. Two of their children sustained minor injuries;

(c) On 12 November 2014, a 25-year old woman with albinism by the name of Violet Kanyama was found dead in the garden of a school near her home in Gawani village, Mulanje district, Malawi. Her body was recovered with both arms and legs missing.

19. These latest attacks underscore the urgent need for States to adopt specific measures to protect and preserve the rights to life and security of person, and the right not to be subjected to torture or ill-treatment. Persons with albinism must be provided with safe and secure spaces where they are able to live dignified lives, free from the fear of being attacked.¹⁴

20. The Tanzanian police response to the attacks in August 2014 has been reported as adequate, with several arrests made, and a special task force has been set up by the Office of the Attorney General to investigate and prosecute the cases. Those welcome responses are ongoing and it is therefore premature to comment on their impact. Meanwhile, civil society groups have made a clarion call to the Tanzanian Government to enlarge the scope of investigation to unearth the black market in organs associated with the attacks and prosecute clients of the trade. Civil society actors also urged the relevant authorities to introduce effective regulation of the activities of traditional health practitioners. The practitioners, who reportedly practise witchcraft and are revered by many for their perceived supernatural powers and ability to carry out magic, have been mentioned as key players.¹⁵

¹⁴ One of the recommendations of the Organisation Internationale de la Francophonie/OHCHR Expert Meeting on Persons with Albinism, held in Geneva on 24 September 2014.

¹⁵ See Organisation Internationale de la Francophonie/Office of the High Commissioner for Human

C. Right to an adequate standard of living and other fundamental rights

21. The situation of persons with albinism who have gone into, or have remained in, hiding in the wake of attacks against them, is worrisome. For instance, according to information received by OHCHR, hundreds of children with albinism have been living in appalling conditions in 13 centres for displaced children and adults with albinism in Tanzania, after being abandoned by their families or fleeing their homes further to a spate of killings and attacks against them. Some of the centres are administered by the Government while others are owned by faith-based organizations.

22. Further, according to information received, the centres are overcrowded and the health and hygiene conditions are very poor. In addition, owing to very limited human and financial resources, teaching and learning materials are almost non-existent. Health-wise, there have been worrisome reports of skin cancer at various stages, which is visible on many of the children with albinism living in the centres, partly owing to the lack of awareness amongst staff as well as a lack of basic health information on self-care for the persons with albinism themselves. Sexual abuse has been reported in some of the centres.

23. In a press release of 15 May 2014, the former High Commissioner also expressed concern about the situation of children with albinism living in the centres. She called on the Tanzanian authorities to take urgent measures to assess and address the situation in the centres, including allegations of sexual harassment and abuse, and the poor living conditions. She added that staff working with people with albinism should be trained on their special needs, in particular with regard to basic preventive measures to avoid skin cancer. In August 2014, a United Nations mission visited two of the centres and expressed concern that the centres reinforce segregation of persons with albinism and separate children from their families.¹⁶ There is therefore an urgent need to look into long-term solutions to reintegrate the children into their communities, avoiding over-reliance on institutions as safe places for children¹⁷.

24. Another example is Burundi, where, after a spate of killings and attacks registered from 2008 to 2012, persons with albinism were accommodated in police stations and houses nearby to guarantee their safety. An assessment of displaced persons with albinism in the Northern Province of Kayanza, in Musongati and in Gitega, recently conducted by the OHCHR field presence, shows the precarious security situation of some of them and the negative impact of the measure on the right to an adequate standard of living.

25. Those concerns were reiterated by the Human Rights Committee in its 2014 concluding observations, requesting Burundi to continue its efforts to protect persons with albinism and to find lasting solutions to their situation.¹⁸

Rights, outcome report of the Expert Meeting on Persons with Albinism: Violence, Discrimination and Way Forward, 24 September 2014 (see footnote 15), para. 21.

¹⁶ The joint mission from OHCHR and the Resident Coordinator's Office in Tanzania visited Buhangiya Primary School in Shinyanga District, which houses 174 children with albinism and Mitindo Primary School in Misungwi District, which houses 45 children with albinism.

¹⁷ The Committee on the Rights of the Child included a reference to those centres in the list of issues on Tanzania adopted on 27 June 2014 (CRC/C/TZA/Q/3-5), also mentioned in para. 53 of the present report. This is also a recommendation from the Expert Meeting: see outcome report of the Expert Meeting on Persons with Albinism, 24 September 2014 (see footnote 15), para. 73.

¹⁸ CCPR/C/BDI/CO/2; see also para. 55 of the present report.

D. Discrimination against persons with albinism

26. Security concerns and associated displacement of persons with albinism are linked to the overall issue of discrimination. The OHCHR report expressed “its grave concern at the severity of the human rights violations committed against persons with albinism in many countries, including the multiple and intersecting forms of discrimination they, particularly children and women, face.”¹⁹

27. Those various forms of discrimination are evident from the “nasty, brutish and short” lives of persons with albinism: if they survive infanticide at birth, they face a constant threat of physical attacks. Should they survive those physical threats, they are unlikely to be educated, owing to the absence of reasonable accommodation for their poor eyesight. A lack of education leads to unemployment or employment outdoors in the sun, where they are vulnerable to developing skin cancer. Skin cancer remains a life-threatening condition for most persons with albinism under the age of 40.²⁰

28. All forms of discrimination affecting persons with albinism are interrelated, and there is an inextricable link between discrimination and poverty. “The right to education of persons with albinism, for instance, is adversely affected by the vision impairment they suffer from. A poor education, in turn, affects their right to an adequate standard of living, consigning many persons with albinism to poverty.”²¹ As a result, the economic and social rights of persons with albinism are disproportionately affected by various types of poverty.

E. Impunity

29. Discrimination encountered by persons with albinism also negatively impacts access to justice.

30. There are little data available on the legal treatment of cases of violence against persons with albinism.²² Where there is information, it is reported that persons with albinism are discriminated against throughout the whole judicial process. It is reported that law enforcement authorities and some members of the judiciary tend to share the same superstitious beliefs entrenched in the communities, including and not limited to, considering persons with albinism as subhuman beings. Procedural fairness including informing the victim of attack about the trial process, preparing him or her for trial and providing him or her with legal representation or access to the prosecutor are all reportedly impaired by subsisting prejudices against the victim as a person with albinism. In addition, erroneous beliefs about albinism, including inadequate knowledge about their condition, for instance knowledge of the visual levels of persons with albinism, has also been reported to negatively impact the weight ascribed to the testimony of victims of attack. Further, corruption and shortcomings in the resources of the justice system fail to translate initial police action into concrete results in the fight against impunity. Such factors effectively create significant obstacles in access to justice for persons with albinism.

¹⁹ A/HRC/24/57, para. 84.

²⁰ For example, one epidemiological study estimated that fewer than 10 per cent of persons with albinism in Tanzania survive to age 30, and only 2 per cent were expected to reach age 40. See Andres E. Cruz-Ingo et al., “Albinism in Africa: stigma, slaughter and awareness campaigns”, *Dermatologic Clinics*, vol. 29, No. 1, pp. 7981 (2011) (citing J. Luande et al., “The Tanzanian human albino skin”, *Cancer*, vol. 55, p. 1823 (1985)).

²¹ A/HRC/24/57, para. 71.

²² *Ibid.*, para. 50.

31. The challenges persons with albinism face in having their cases brought to justice are grounded in the vulnerability of the population. They include

the fear of further attacks, reprisals or further stigmatization; difficulties in finding witnesses owing to the ostracism they face within their community and, frequently, the involvement of family and community members in the attacks; the lack of awareness of legal rights; the lack of financial resources; the inadequate capacity of the judicial system to address such cases; the lack of legal aid and adequate legal representation; the lack of knowledge of or confidence in the law enforcement and justice systems.²³

32. Without effective and affordable access to justice, persons with albinism are unable to adequately claim their rights and contest the human rights violations which they are subjected to.²⁴ As a result, no type of redress is available to victims, even in the form of medical and psychological support.²⁵ To date, it is reported that most assistance to victims in the form of medical and psychological support has been provided exclusively by non-governmental organizations.

33. The link between poverty and witchcraft is also a matter of concern and has been explained in the following terms:

As is the case with witchcraft accusations against women, the elderly and children, *muti*²⁶ murders of persons with albinism appear to follow patterns of poverty, misfortune, tension and conflict in societies. Attacks may originate from tense social relations, where no effective or social alternative exists to release or explain such tension. Lack of access to basic resources, education and basic health services correlate with such human rights abuses. These spiritual explanations act as a way of justifying life's misfortunes, hence, maintaining social order. It is, predominantly, the most vulnerable and marginalized groups in society who are accused of witchcraft, because they are either least able to defend themselves from attack and are, therefore, easy targets. Furthermore, as they are considered of little value to society, they consequently become a burden [sic] in times of hardship.²⁷

34. States have an obligation to criminalize, investigate and prosecute perpetrators of crimes affecting persons with albinism. That is even more critical given the heightened vulnerability of persons with albinism. The strengthening of the legal response to killings of, and attacks against, persons with albinism will also serve as a deterrent.

F. Women and children

35. The OHCHR report mentions that "women and children with albinism are particularly vulnerable as they are exposed to intersecting and multiple forms of discrimination. In addition, children are particularly targeted for ritual killings and women with albinism are sometimes victims of sexual violence."²⁸ That is because there is the

²³ Ibid., para. 53.

²⁴ Ibid., para. 70.

²⁵ Ibid., para. 55.

²⁶ *Muti* is a word used in Southern Africa to refer to magic that enables people to gain power or wealth.

²⁷ The Witchcraft and Human Rights Information Network, "Exploring the role of Nollywood in the *Muti* murders of persons with Albinism" (16 August 2013).

²⁸ A/HRC/24/57, para. 74.

belief in some communities that having sex with a person with albinism can cure HIV/AIDS.²⁹

36. Women who give birth to children with albinism are particularly exposed. They are often rejected by their husbands, accused of adultery and blamed for giving birth to children who are perceived as a curse, misfortune or a cause of shame for the family.³⁰

37. In her opening remarks at a press conference during her mission to Nigeria in March 2014, the former United Nations High Commissioner for Human Rights alluded to the specific discrimination faced by persons with albinism and the extra vulnerability faced by children with the condition. She stated "One group at particular risk are the some 800,000 children among the 2 million people living with albinism in Nigeria. Many of them are not in school because of visual impairment, discrimination from other children, and social exclusion as a result of their skin colour."

38. The 2014 annual report of the Special Representative of the Secretary-General on Violence against Children identified children with albinism as particularly vulnerable. The report explains that children with albinism are

at high risk of abandonment, stigmatization, and marginalization as a result of their appearance, and due to disability factors associated with their condition, such as impaired eyesight and sensitive skin (...). Social and structural discrimination condemns these children to a position of extreme vulnerability. Children with albinism are exposed to severe incidents of violence, mutilation and murder. At times they become the target of witchcraft accusations, leading to the use of their body parts for ritual purposes. Children who survive such attacks are left with serious and long-lasting health and psychological consequences, and the development of their full potential is compromised for life. Driven by fear and superstition, incidences of violence are largely met with silence and indifference. They are rarely reported or followed by investigation or prosecution. Overall, there is a pervasive culture of impunity.³¹

G. Violence and discrimination against persons with albinism: a global phenomenon?

39. While it has been reported that persons with albinism globally face discrimination and stigma,³² information on cases of physical attacks against persons with albinism is mainly available from countries in Africa. It is important to reiterate the point made in the OHCHR report that any real or apparent focus on Africa—whether in the present report or the issue generally—is explained by the fact that, to date, all reported cases of ritual attacks have come from that region.

40. The manner in which discrimination faced by persons with albinism manifests itself, and its severity, vary from region to region. In the western world, including North America, Europe and Australia, discrimination often consists of name-calling, persistent teasing and bullying of children with albinism.³³ In those regions, the substance of discrimination is

²⁹ This phenomenon has been exposed by various NGOs working in Burundi, Côte d'Ivoire, Kenya, Namibia, Tanzania and Zimbabwe.

³⁰ Outcome report of the Expert Meeting on Persons with Albinism: Violence, Discrimination and Way Forward, 24 September 2014 (see footnote 15), para. 15.

³¹ A/69/264, paras. 34–37.

³² A/HRC/24/57, paras. 2 and 65.

³³ See Under the Same Sun (UTSS), www.underthesamesun.com/; see also Asociación de Ayuda a

entrenched misconceptions and misunderstanding about albinism, notably perpetuated by the media and popular culture, which consistently portray persons with albinism in a negative light.³⁴ Given the rarity of albinism in those regions (an estimated 1 in 17,000 to 20,000) the media and popular culture are major sources of information on the condition for the majority. Therefore, unless specific albinism awareness-raising is conducted by support groups and civil society, such discrimination is unlikely to be brought to light.

41. Persons with albinism face more severe forms of discrimination and violence in those regions where the majority of the general population are relatively dark-skinned. The degree of contrast in pigmentation between the majority and the person with albinism in a community tends to correlate positively with the severity and intensity of discrimination faced by persons with albinism. In other words, a greater degree of contrast in pigmentation often gives rise to a greater degree of discrimination. That appears to be the case in some sub-Saharan African countries where albinism is shrouded in myth and dangerous and erroneous beliefs.

42. Little information is available from other regions such as Asia, South America and the Pacific etc. However, some reports indicate that in China and other Asian countries, children with albinism face abandonment and rejection by their families. A recent epidemiological study of persons with albinism from a specific tribe in Pakistan explains the multi-layered human rights problems faced by persons with albinism, including lack of understanding of albinism, social rejection, medical and psychological problems, as well as confinement to poverty.³⁵ Reliable testimonies received from Mumbai, India, also indicate that persons with albinism tend to be viewed as cursed on account of their appearance. That perceived curse is considered contagious by some, such that persons with albinism are effectively ostracized and isolated from and by mainstream society. Such isolation has been reported to occur even when persons with albinism are moved into special schools such as schools for the blind owing to their visual impairment. Such treatment even within the community of persons with disabilities shows the pervasiveness of discrimination against persons with albinism.

43. Given the fact that evidence such as the above has only come to the fore in the last year, the absence of information on other regions should not be interpreted to mean that there is no problem of discrimination, stigmatization and violence in those regions. Rather, there should be a general presumption that there are human rights issues facing persons with albinism in each region. That presumption can be rebutted by targeted studies in the near future. Lack of sufficient knowledge remains a significant barrier to tackling discrimination, stigma and violence.

III. Responses: successes and subsisting challenges

A. Advocacy

44. The documented reports of ritual killings of, and attacks against, persons with albinism, and the many more undocumented acts of violence and discrimination they face,

Personas con Albinismo (ALBA), Spain, see www.albinismo.es.

³⁴ In popular culture, particularly in literature and in film, persons with albinism are portrayed as villains, demons, ghosts, freaks of nature, mystical anomalies or village idiots.

³⁵ See Azam Jah Samdani and Bahram Khan Khoso, "A unique albino village of Bhatti Tribe in rural Sindh, Pakistan, with oculocutaneous albinism manifestations: an epidemiological study, *Iranian Journal of Dermatology*, (Iranian Society of Dermatology, 2009), pp. 42–46. See also "Feature: Nepal's albinos caught between reality and myth", (Shanghai Daily.com, 9 October 2014).

undoubtedly call for a more active promotion of, and advocacy for, the rights of persons with albinism. Without strong advocacy it will be difficult to achieve concrete results at the international and regional levels.

45. One example of such advocacy is the initiatives recently taken by OHCHR to raise awareness and promote the protection of the rights of persons with albinism, thus increasing the visibility of violations against the group, which until then had received little attention from the international community. The High Commissioner's voice, through press statements; side-events on the margins of Human Rights Council sessions; expert meetings such as that mentioned in paragraph 7 of the present report; and online public information campaigns; are all tools that can be used to increase understanding and raise awareness of albinism, all of which OHCHR has been successfully using with the aim of achieving a consensus among States on the importance of promoting and protecting the rights of persons with albinism and combating impunity for attacks against them.

46. Another advocacy tool that can be used to raise awareness of the human rights situation of persons with albinism is through engaging artists in the endeavour, as they can reach out to a greater number of people through their voices and work. In that regard, it is noteworthy that, on 5 December 2013, Salif Keita, musician and advocate for the rights of persons with albinism, performed at the Palais des Nations in Geneva.

47. In addition to advocacy at the international level, it is equally important to engage in advocacy at the regional level. Here the role of civil society organizations becomes very important and their engagement with human rights mechanisms at regional level needs to be enhanced with a view to stimulating regional responses to key human rights concerns. Representatives of civil society organizations conducting advocacy on behalf of persons with albinism in African countries for instance, can be supported to participate in platforms such as the Non-governmental organization (NGO) Forum in Banjul or in discussions on cooperation with the African Union organs, as was done by OHCHR in 2013.

48. At the national level, there are only very few instances of such advocacy that can be referred to. For instance, the Human Rights Component of the United Nations Operation in Côte d'Ivoire (ONUCI) has strengthened the operational and institutional capacities of one of the albinism groups in the country, Bien-Etre des Albinos de Côte d'Ivoire (BEDACI), through a quick impact project, and has conducted training on documentation techniques of human rights violations.³⁶ The Human Rights Component of the United Nations Office in Burundi (BNUB) has for its part been monitoring the situation of people with albinism in the country. Human rights advisers can also be another good option for advocacy as they can be instrumental in promoting a more active role of key stakeholders in the protection of persons with albinism, including the United Nations Country Team, the national human rights institution and the relevant authorities.

B. Assistance to victims

49. The United Nations Voluntary Fund for Victims of Torture, managed by OHCHR, is a concrete way to care for the survivors of attacks and their family members. It provides direct assistance to victims of torture and their family members through grants awarded to non-governmental channels of assistance, including NGOs, rehabilitation centres, associations of victims and family members. In 2014, the Fund awarded a grant, through its

³⁶ See ONUCI replies to the Advisory Committee questionnaire, available from www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/AttacksAgainstPersonsWithAlbinism.aspx.

intersessional emergency procedure, to the non-governmental organization Under The Same Sun in Tanzania, for the provision of medical rehabilitation (prosthetic work) and psychological assistance to several identified victims, both men and women, mutilated during attacks. The financial support to that victim-focused project has been renewed by the Fund for 2015 so as to extend the specialized assistance provided by the project to an additional number of victims and their families.

C. International human rights mechanisms

50. Various human rights mechanisms, notably the Human Rights Council, including the universal periodic review and treaty monitoring bodies have addressed the situation of persons with albinism. Some examples of the recommendations made in 2014 are listed below.

51. In April 2014, during the review of Côte d'Ivoire under the universal periodic review (UPR), Spain expressed concern regarding discrimination against persons with albinism and made the following recommendation which enjoyed the support of the country: "To take concrete measures to protect the rights of people with albinism, in accordance with the recommendations made by the Office of the High Commissioner, and raise awareness among society about their situation."³⁷

52. Also in April 2014, during the UPR of the Democratic Republic of the Congo, Guatemala shared the concern of the Committee on Economic, Social and Cultural Rights³⁸ about the killing of persons with albinism and the use of their organs for witchcraft ceremonies. The following recommendation, which enjoyed the support of the country, was made: "To combat all forms of discrimination against persons with albinism".³⁹

53. In June 2014, the Committee on the Rights of the Child, in its list of issues for Tanzania, requested the State Party to:

indicate whether a comprehensive strategy has been put in place to stop the gross violations of the right to life, survival and development of children with albinism in the State party. In particular, please provide precise and detailed information on: (a) The educational and awareness-raising measures undertaken and currently being conducted by the State party to overcome traditional beliefs causing stigma and discrimination against children with albinism leading to killings and a wide range of violence against them; (b) The measures adopted to prevent, investigate and punish crimes against children with albinism, including the use of their body parts for witchcraft and to provide redress to victims; (c) The measures taken to improve the living and safety conditions in the centres where these children are placed, to ensure that they are not subject to degrading treatment or abuse in these centres, to adequately train staff and hold them accountable for any professional misconduct, and to ensure regular supervision and control of these centres; (d) Any pilot initiative aimed at preventing the placement of these children and/ or to encourage the reunification of children with albinism with their families, when possible.⁴⁰

54. In its concluding observations on the periodic report of Swaziland of July 2014, the Committee on the Elimination of Discrimination against Women expressed concern

³⁷ A/HRC/27/6, recommendation 127.103.

³⁸ E/C.12/COD/CO/4.

³⁹ A/HRC/27/5, recommendation 134.47.

⁴⁰ CRC/C/TZA/Q/3-5, para. 8.

at the gruesome murders of women and girls with albinism, whose body parts are harvested for rituals. The Committee is particularly concerned at reports that, in the past, perpetrators of such murders were prosecuted for less-serious crimes, such as causing grievous bodily harm, and therefore received lenient sentences upon conviction. The Committee recommends that the State party urgently establish a national register of persons with albinism and provide protection to women and girls with albinism. The State party should ensure that all complaints relating to violence against women and girls with albinism are effectively investigated and perpetrators prosecuted and punished with appropriate sanctions upon conviction.⁴¹

55. In October 2014, in its concluding observations on the periodic report of Burundi, the Human Rights Committee requested the State Party to continue its efforts to protect persons with albinism against any form of discrimination, including physical attacks, and to find sustainable solutions guaranteeing their access to health care, social services, employment and education.⁴²

56. The Human Rights Council, in June 2014, adopted resolution 26/10 without a vote, recommending that the General Assembly proclaim 13 June as International Albinism Awareness Day. The date is symbolic, as the first global resolution on attacks and discrimination against persons with albinism was adopted by the Human Rights Council on that date in 2013. The initiative provides a platform through which stakeholders can raise public awareness on this pressing human rights issue. The resolution recognizes the importance of increasing awareness and understanding of albinism in the fight against global discrimination against, and stigmatization of, persons with albinism. The day was called for by some NGOs serving persons with albinism, particularly those based in countries where there have been records of attacks. It has also been welcomed by an overwhelming majority of a cross-regional listing of NGOs serving persons with albinism worldwide. Following the recommendation made by the Council, on 18 November 2014, the General Assembly proclaimed 13 June as International Albinism Awareness Day.

D. Regional human rights mechanisms

57. As a very significant step at the African regional level, on 5 November 2013, the African Commission of Human and People's Rights adopted resolution 263 on the prevention of attacks and discrimination against persons with albinism. Among other things, the resolution requires member States to include in their reports to the African Commission information on the situation of persons with albinism, including good practices in protecting and promoting their rights.

58. Also in November 2013, at its twenty-second ordinary session held in Addis Ababa, the African Committee on the Rights and Welfare of the Child considered the issue of albinism and adopted a Declaration on Ending Discrimination and Violence against Girls in Africa, in which the situation of children with albinism was addressed.

E. Challenges

59. Despite the above strides, there remain a number of challenges to a more active engagement with human rights mechanisms. They are detailed below, amongst other challenges to ensuring an adequate response to the issue:

⁴¹ CEDAW/C/SWZ/CO/1-2, paras. 22-23.

⁴² CCPR/C/BDI/CO/2.

(a) Limited knowledge of the issue and its impact on the enjoyment of human rights by persons with albinism;

(b) Limited knowledge and capacity of associations of persons with albinism around the world to engage with human rights mechanisms;

(c) Little information, scarce data and incomplete reports on cases of discrimination on specific grounds;

(d) Scarcity of reliable data on cases of killings of and attacks⁴³ against persons with albinism in countries other than Burundi, Côte d'Ivoire or Tanzania, where there is a higher prevalence of albinism, but also a more active and better skilled civil society. The lack of information makes it difficult for potentially relevant special procedures mandate-holders to give attention to the issue within their respective mandates, including the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment, on racism and related intolerance, education, disability, health, violence against women and violence against children. Similarly, the secrecy surrounding witchcraft and the underground nature of the market associated with the trafficking of persons and organs make it difficult to find evidence relevant to the mandates of the Special Rapporteur on the sale of children and the Special Rapporteur on trafficking in persons;

(e) Further, the scope of certain special procedures mandates prevents the mandate-holders from addressing the issue. For example, persons with albinism do not fall under the internationally accepted definition of minorities, which is limited to national, ethnic, religious or linguistic minorities,⁴⁴ and do not fall therefore within the scope of the mandate of the Special Rapporteur on minority issues. While the definition of "minority" is currently under review, it is unclear at this point whether the new definition will accommodate persons with albinism;

(f) Human rights challenges associated with albinism are multi-layered and are not currently being addressed in a comprehensive and sustainable manner by any human rights mechanism. In addition to the fact that they do not fall within the scope of the current definition of minorities, persons with albinism often suffer from poor eyesight and are prone to developing skin cancer, but cannot or would not want to be classified as persons with disabilities, as that would mean adding another layer of labelling and discrimination to which they may be subjected. They are attacked and tortured, and their body parts and organs are trafficked and sold owing to the myths and misconceptions surrounding albinism. Yet the protection afforded to persons with albinism by international human rights treaties does not cater for their special needs or the complexities they face, while existing special procedures can only partly address the situation of persons with albinism from a particular and limited angle to the extent that the scope of their mandates allows.

IV. Findings and recommendations

60. Persons with albinism have special needs. In addition to issues pertaining to the rights to life and security of person, it is necessary to address their special needs in terms of education due to their poor eyesight as well as their special health needs, particularly in the area of skin cancer prevention. The situation of human rights of persons with albinism should therefore be addressed in a holistic manner.

⁴³ It should be noted that ritual killings and attacks remain undocumented and unreported, owing to the code of silence surrounding such crimes and the vulnerability of the targeted population.

⁴⁴ See United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992.

The severity of the violations of the human rights of persons with albinism and the particular vulnerability of that segment of the population requires States not only to take a more active role to protect them, but also to take effective measures to eradicate poverty and improve enjoyment by persons with albinism of all their rights.

61. There is increased engagement of international and regional mechanisms with the issue of persons with albinism. Efforts however continue to be fragmented and only partially address the complexity of the human rights challenges that persons with albinism face. A more sustainable response, to bridge protection gaps and to ensure accountability for human rights violations committed against persons with albinism, is required.

A. States

62. States are the prime guardians of the human rights of all persons within their jurisdictions. States should have protection measures against practices such as attacks against persons with albinism and should comply with their international obligations concerning human rights, which are enshrined in both local laws and international human rights legal instruments. With regard to the latter, special mention should be made of the Convention on the Rights of the Child (see in particular articles 19 to 23), the Convention against Torture, the African Charter on the Rights and Welfare of the Child, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The existing body of international human rights law in terms of general human rights, standards on non-discrimination, equality and human dignity require effective implementation so as to protect and preserve the rights to life and to security of persons with albinism, as well as their right not to be subjected to discrimination, torture and ill-treatment.⁴⁵

63. Clear laws criminalizing and punishing acts of violence against persons with albinism should be enacted. States need to clarify ambiguities where they exist in laws relating to witchcraft and traditional health practice, including through the effective regulation of the licenses of traditional healers and witchdoctor and a clear ban on the use of harmful practices. Attacks against persons with albinism should also be considered as an aggravated form of the crime, incurring a more severe punishment so that additional deterrence may be achieved.⁴⁶

64. It should be stressed that simply promulgating laws is not enough to prevent violence. They should be implemented. Current laws against assault and murder tend to provide persons with albinism with minimum protection of their rights to life and security of person. Without effective implementation of those laws, States may become complicit in such attacks by enabling a reign of impunity and perpetuating fear of attack in the lives of persons with albinism. Hence, laws should be accompanied by concrete measures that would facilitate their implementation, such as advocacy and the training of law enforcement personnel and judicial authorities.

65. In order to respond to violence and discrimination against persons with albinism and address their root causes, a multipronged and holistic approach is necessary, involving protection and accountability measures in addition to broad public education campaigns.⁴⁷

⁴⁵ Outcome report of the Expert Meeting on Persons with Albinism: Violence, Discrimination and Way Forward, 24 September 2014, para. 54.

⁴⁶ *Ibid.*, para. 70.

⁴⁷ Outcome report of the Expert Meeting on Persons with Albinism: Violence, Discrimination and Way Forward, 24 September 2014 (see footnote 15), para. 52.

Accountability measures should include successful prosecution and the guarantee of redress in the form of compensation and rehabilitation.

66. States should fight impunity and ensure that cases of violence and attacks are prosecuted successfully. Publicizing the verdicts of prosecutions will serve as deterrence and, in effect, protect persons with albinism while granting them legal redress and justice for the attacks. Ensuring registration of birth is also an important measure in the fight against impunity, as it will remove the invisibility of children with albinism. It is equally indispensable to evaluate the needs of persons with albinism and plan for the basic social services to which they are entitled.⁴⁸

67. The protective role of the family should be supported. Parents and caregivers, as well as members of the extended family, play a central role in the protection of children with albinism. They need to be sensitized and engaged. There is also a need to empower children to prevent and address incidents of violence against them.⁴⁹

68. Active public education and awareness-raising campaigns must be launched and sustained. Given the powerful potential of such campaigns for dispelling superstition and misinformation about albinism, they remain indispensable tools for curbing violations of the human rights of persons with albinism. They should aim at combating prejudice, superstition, misconception and stigma, with a view to diminishing the multiple and intersecting forms of discrimination affecting persons with albinism. States bear the ultimate responsibility for such attitudes and practices. A gradual approach may be adopted, by which States would first target specific key groups such as law enforcement officers, members of the judiciary, educators, social workers, medical service providers, and the families and communities of persons with albinism. Further, it is important that States include in their educational curricula, in a standardized manner, courses to instruct people on the rights of persons with albinism.⁵⁰

69. In raising awareness of the problems through the mass media, both traditional and social media will be crucial in highlighting the issues faced by persons with albinism, including marginalization, stigmatization and discrimination, and could also contribute positively to protecting their rights by directing public opinion to the core of the problem, sensitizing the population and collectively searching for a solution to help protect persons with albinism. Television campaigns to demystify perceptions about persons with albinism and promote positive stories about them are one of the tools that could be used.

70. Greater attention will need to be given to supporting community level public campaigns through a wider use of community radio. When planning and implementing community level responses, there is a need to take into consideration the prominent community role played by traditional health practitioners involved in witchcraft.⁵¹

71. Resources, both financial and otherwise, are important for the success of any effort to improve the lives of persons with albinism. Taking into consideration that persons with albinism are disproportionately affected by poverty, owing to the discrimination and marginalization they face, there is a need for resources to develop activities designed to decrease and eliminate prejudice and create an environment conducive to respect for their rights and dignity.

72. There is a need for a comprehensive strategy to guarantee the protection of persons with albinism, notably in those countries where attacks have been reported. Such a strategy

⁴⁸ Ibid., para. 63.

⁴⁹ Ibid., paras. 66–67.

⁵⁰ Ibid., para. 57.

⁵¹ Ibid., para. 60.

should be developed and implemented in coordination with, and with the support of, State authorities, various sectors of society, key stakeholders and civil society, as well as persons with albinism. Key non-governmental organizations such as Under The Same Sun and the World Albinism Alliance are important actors in that endeavour.

73. The commitment of all stakeholders to combat violence and discrimination against persons with albinism is critical. It is important to involve religious leaders who are well respected and influential in their communities and are in a position to provide followers with guidance on the issue of respect for the human rights and dignity of persons with albinism.⁵²

B. International community

74. International and regional mechanisms should continue to give the necessary attention to the issue. Some of its facets can be integrated across existing human rights mechanisms, but credible data on cases of attacks and discrimination in several countries are few and far between or not entirely reliable.⁵³ Action should be taken to gather such information in order to put in place effective preventive and remedial action. Gathering information should be an independent process and ought not to be expected of existing special procedures mandate holders, as it is beyond their current scope and capacity.

75. Therefore it is necessary to consider setting up a specific dedicated mechanism to work on ending violence against persons with albinism and the structural and multi-layered discrimination they face. A large number of the answers to the questionnaire of the Advisory Committee called for the establishment of such a mechanism. A call for a specific and dedicated special procedure was also made by the participants at the expert meeting.

76. The special procedure would initiate and foster a holistic approach to the issue. Further, the mandate-holder would have better access to information, improved understanding of albinism both regionally and globally, and could initiate as well as follow up on concrete measures taken on the ground, through regular field visits and cooperation with authorities, civil society and other key stakeholders.

77. In conclusion, a dedicated special procedure mandate would be a first step towards ensuring an effective, comprehensive and more sustainable response to the human rights violations faced by persons with albinism.

⁵² Ibid., para. 58.

⁵³ See Under The Same Sun (UTSS), "Reported attacks of persons with albinism" (PWA) — Summary, available from www.underthesamesun.com/sites/default/files/Attacks%20of%20PWA%20-%201%20page_0.pdf



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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Human rights bodies and mechanisms

Final research-based report of the Human Rights Council Advisory Committee on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations

GE.15-02194 (E)



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I. Mandate and introduction

1. In its resolution 22/16, the Human Rights Council requested the Advisory Committee to prepare a research-based report on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations.
2. At its eleventh session, in August 2013, the Committee established a drafting group composed of the following experts: Chinsung Chung, Latif Hüseyinov, Vladimir Kartashkin, Katharina Pabel, M. Cecilia Rachel V. Quisumbing (Rapporteur), Anantonia Reyes Prado (Chairperson) and Imeru Tamrat Yigezu. Subsequently, Karla Hanania de Varela, Kaoru Obata and Ahmer Bilal Soofi also joined the drafting group.
3. At its twelfth session, in February 2014, the Committee decided to appoint Ms. Reyes Prado as Rapporteur and Mr. Hüseyinov as Chairperson of the drafting group. At its thirteenth session, in August 2014, the Committee designated Mr. Soofi as Chairperson of the drafting group to replace Mr. Hüseyinov. The Committee also recommended that the Human Rights Council extend the time for the submission of the progress report, a recommendation that the Council endorsed in its decision 26/116. The Committee therefore presented the progress report to the Council at its twenty-seventh session.¹
4. Pursuant to Council resolution 22/16, the Committee sought the views and inputs of Member States and various stakeholders. Questionnaires were prepared and disseminated in September 2013 to all Member States and to representatives of civil society and other stakeholders requesting information on experiences, best practices and main challenges faced in the promotion and protection of human rights in post-disaster and post-conflict situations. A total of 39 responses were received, including from countries that experienced post-disaster and post-conflict situations (see paras. 48 – 70 below).
5. In February 2014, the Committee, pursuant to paragraph 2 of Council resolution 22/16, decided also to seek the views of United Nations agencies. No replies were, however, received.

II. Scope

6. The title of the Committee's mandate suggests commonalities between post-disaster and post-conflict situations, which can be found in the fact that both can represent a critical threat to the health, safety, security or well-being of a community or large group of people. The Committee has therefore adopted a holistic human rights approach to post-disaster and post-conflict situations, in terms of applicability of other branches of international law, including international humanitarian law, refugee law and international criminal law, with a view to strengthened protection.
7. A post-disaster or post-conflict situation starts immediately after a disaster has occurred or after the end of a conflict. It ends once the right to life and the security, physical integrity and dignity of the affected population is protected again and the population has recovered its rights related to basic necessities of life, including economic, social, cultural, civil and political rights. Some reflection is needed on the meaning of recovery of civil life, namely whether the restoration of the status quo ante would suffice,

¹ The members of the drafting group are grateful to Veronica Sagastume, Programme Coordinator of Norwegian Church Aid in Guatemala, and leader in the ACT Alliance Forum in Guatemala, for her important input during the drafting of the present report.

since disasters or conflicts severely affect those whose living conditions are already precarious. Further thought is required on how to improve these living conditions. Special attention should be paid to the early stage of post-disaster and post-conflict situations (not excluding matters of transitional justice), because humanitarian activities are mainly developed at that stage. A holistic human rights-based approach must be also considered in the rehabilitation and reconstruction stages, as well as in resettlement processes. Protracted crisis situations should also be considered.²

8. While humanitarian activities mostly foster the promotion and protection of human rights, and many good practices are highlighted in the present report, experience also shows that humanitarian activities may be sometimes seriously flawed in terms of human rights. The main challenges faced in the promotion and protection of human rights in post-disaster and post-conflict situations are therefore also highlighted below.

9. A perspective that respects the protective normative framework and takes into account a human rights-based approach must already be considered prior to the disaster, and Governments should be aware of their responsibilities in the protection of their populations. That affected persons understand their rights is equally important.

III. Definitions

10. Over the past decades, the world has witnessed a significant increase in the number of disasters reported: from fewer than 100 per year reported in 1975 to more than 400 in 2010. The number of people affected and the economic damage caused by disasters have also increased.³ Conflicts and natural disasters have multi-dimensional effects on human rights. They create crises that affect the rights to life, health and security. Crops and infrastructure are destroyed, having a long-term effect on livelihood, access to food and water, education, health care and even access to justice and other basic services. A natural disaster or conflict becomes an emergency⁴ when local families and communities cannot cope with or recover from it on their own.

11. It has been estimated that complex, multi-causal crisis will become more common.⁵ Bearing in mind such a multi-dimensional scope, many terms need to be considered in order to attain a better understanding of the theoretical and operative complexity of these situations.

A. Terms used in the context of post-conflict situations

International and non-international armed conflict

² Protracted crisis situations are characterized by recurrent natural disasters and/or conflict, food crises, breakdown of livelihoods and insufficient institutional capacity to react to the crises. Countries in protracted crises thus need to be regarded as a special category with special requirements in terms of interventions by the development community. See "Countries in protracted crisis: what are they and why do they deserve special attention?" in *The State of Food Insecurity in the World*, Food and Agriculture Organization of the United Nations, Rome, 2010.

³ International Federation of Red Cross and Red Crescent Societies, "Red Cross Red Crescent approach to disaster and crisis management" (available from www.ifrc.org/en/who-we-are/vision-and-mission/disaster-and-crisis-management/).

⁴ Emergencies are traditionally categorized into rapid onset disasters, chronic conflicts, forgotten and cyclical.

⁵ "Conflict remains an important source of vulnerability, but other hazards and risks are gaining prominence. Increasingly we will see climate change, urbanization, migration, access to food, and technological disasters all acting at once and further compounding risks and vulnerabilities". Feinstein International Centre, Three-Year Plan: January 2012 to December 2015.

12. International humanitarian law makes a distinction between an international armed conflict, whenever there is resort to armed force between two or more States, and non-international armed conflicts, which are protracted armed confrontations between governmental armed forces and one or more non-State armed groups, or between such groups only. The armed confrontation must reach a minimum level of intensity and the parties involved must show a minimum degree of organization.⁶

Peacebuilding

13. The term emerged in the 1970s in the work of Johan Galtung, who called for the creation of peacebuilding structures to promote sustainable peace by addressing the root causes of violent conflict and supporting indigenous capacities for peace management and conflict resolution. Since then, the term has covered a multidimensional exercise and tasks ranging from disarming warring factions to rebuilding political, economic, judicial and civil society institutions.⁷

Post-conflict dialogue

14. A methodical approach, focused on the importance of bringing an armed conflict to an end and moving to a peacebuilding programme. The establishment of dialogue with the other party to the conflict is a part of reconciliation and peacemaking processes. Representatives of the most vulnerable groups and affected people should be involved in such dialogue.

Post-conflict situation

15. A situation in which open warfare has come to an end. Such situations remain tense for years or decades and can easily relapse into large-scale violence. They generate enormous development challenges for the communities affected and for international actors, in vital sectors as security, justice, economic policy, education, media, agriculture, health, and environment.⁸ Rebuilding institutional infrastructure shattered during conflict is as important as, if not more important than, physical infrastructure.⁹

Post-conflict reconstruction

16. A generic term referring to the rebuilding of society in the aftermath of a conflict. Physical infrastructures have to be repaired or rebuilt, governmental institutions have to be reformed, psychic traumas of civilians and combatants have to be treated, the economy has to be restarted, refugees to be repatriated, reconciliation between belligerents has to be initiated, justice to be delivered. Efforts of this type require sustained support from the international community.

Post-conflict recovery

17. The long-term rebuilding of a society in the aftermath of violent conflict. It includes political, socioeconomic and physical aspects, such as disarming and reintegrating combatants, finding durable solutions for internally displaced persons, reforming

⁶ See the ReliefWeb Glossary of Humanitarian Terms (available from <http://reliefweb.int/report/world/reliefweb-glossary-humanitarian-terms>) and International Committee of the Red Cross, "How is the term 'Armed Conflict' defined in international humanitarian law?", opinion paper, 17 March 2008 (available from www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm).

⁷ See Peacebuilding and the United Nations (www.un.org/en/peacebuilding/pbso/pbun.shtml).

⁸ Gerd Junne and Willemijn Verkoren, eds., *Postconflict Development: Meeting New Challenges* (Boulder, Lynne Rienner Publishers, 2005).

⁹ Lakhdar Brahimi, "State building in crisis and post-conflict countries", seventh Global Forum on Reinventing Government. Building Trust in Government, June 2007, Vienna.

governmental institutions, promoting trauma work and reconciliation, delivering justice, restarting the economy and rebuilding damaged infrastructure. Related terms include war-to-peace transitions and post-conflict reconstruction. It should be noted that the term "recovery" has a broader connotation than reconstruction, which implies an emphasis on physical aspects.¹⁰

Post-conflict transition

18. The tenuous period immediately following the termination of conflict during which humanitarian needs must still be met and programmes, such as those for disarmament, demobilization, reintegration and rehabilitation and for rebuilding infrastructure, remain at an early stage. This period may also involve the temporary transfer of government functions to a United Nations transitional administration, such as in the case of Kosovo and Timor-Leste.¹¹

Transitional justice

19. A transitional justice system is often extremely important after a conflict or situation of violence. The States concerned should develop a strategy on transitional justice that satisfies the rights of victims by means of reconciliation and reparation mechanisms. A transitional justice strategy comprises a set of rules, public policies and institutions the goal of which is to redress the legacy of a violent past. It consists of both judicial and non-judicial processes and mechanisms that include prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations. In this regard, international assistance must focus on the development of the national capacity to initiate and lead the process. Disarmament, demobilization and reintegration initiatives should be coordinated with transitional justice processes and mechanisms in a positively reinforcing manner.¹²

20. Post-disaster situations comprise both natural and man-made disasters. Natural disasters or hazards¹³ are events brought about by natural hazards that seriously affect the society, economy and/or infrastructure of a region, such as floods, earthquakes or hurricanes that cause great damage or loss of life. Depending on population vulnerability and local response capacity, natural disasters pose challenges and problems of a humanitarian nature. By contrast, technological or man-made hazards, such as complex emergencies or conflicts, famine, population displacement and industrial or transport accidents¹⁴ are events caused by humans and occur in or close to human settlements. This

¹⁰ Glossary of Terms for Conflict Management and Peacebuilding, United States Institute of Peace.

¹¹ www.unocha.org.

¹² See S/2004/616.

¹³ In the report of the Secretary-General on relief to development (A/60/89 - E/2005/79), the expression "natural disasters" was purposely not used, as it conveys the mistaken assumption that disasters occurring as result of natural hazards are wholly "natural" and therefore inevitable and outside human control. Instead, it is widely recognized that such disasters are the result of the way individuals and societies relate to threats originating from natural hazards. The nature and scale of threats inherent in hazards vary. The risks and potential for disasters associated with natural hazards are largely shaped by prevailing levels of vulnerability and measures taken to prevent, mitigate and prepare for disasters. Thus, disasters are, to a great extent, determined by human action, or lack thereof. The expression "disasters associated with natural hazards" should therefore be used, in accordance with the Hyogo Framework for Action 2005-2015, adopted in January 2005 at the World Conference on Disaster Reduction in Kobe, Hyogo, Japan.

¹⁴ International Federation of Red Cross and Red Crescent Societies, Types of disasters: definition of hazard (www.ifrc.org/en/what-we-do/disaster-management/about-disasters/definition-of-hazard/).

can include environmental degradation, pollution, accidents and the impact of climate change.¹⁵

21. In the present report, the term "natural disaster" includes both sudden and slow-onset natural disasters. It is important to understand, however, that the magnitude of the consequences of sudden natural hazards is a direct result of the way individuals and societies relate to threats originating from natural hazards. The magnitude of the consequences is, thus, determined by human action or the lack thereof.¹⁶

B. Terms used in the context of humanitarian response

Humanitarian crisis

22. An event or a series of events representing a critical threat to the health, safety, security and/or well-being of a community or other large group of people, usually over a wide area. Armed conflicts, epidemics, famine, natural disasters and other major emergencies may all involve or lead to a humanitarian crisis that extends beyond the mandate or capacity of any single agency. An emergency is a large-scale crisis that destroys the lives of individuals, wrecks communities and overwhelms their ability to cope.¹⁷

23. Humanitarian crises can be grouped under three categories: Natural disasters (earthquakes, floods, storms and volcanic eruptions); man-made disasters (conflicts, plane and train crashes, fires and industrial accidents); complex emergencies (when the effects of a series of events or factors prevent a community from having access to their basic needs, such as water, food, shelter, security or health care). According to the International Federation of Red Cross and Red Crescent Societies, such "complex emergencies" are typically characterized by extensive violence and loss of life, the displacement of populations, widespread damage to societies and economies, the need for large-scale, multi-faceted humanitarian assistance, hindrance or prevention of humanitarian assistance by political and military constraints, particularly in post-conflict situations, and significant security risks for humanitarian relief workers in some areas.¹⁸

24. These three kinds of emergencies can have an impact on millions of people in a number of countries. In addition, there are increasingly new concepts for categorizing emergencies related to climate, technology and health pandemics.

Humanitarian action, humanitarian aid, humanitarian assistance

25. The terms "humanitarian action", "humanitarian aid" and "humanitarian assistance" are often used interchangeably in post-disaster or post-conflict situations where the principles and rules of humanitarian response are applied. For instance, according to the World Health Organization, humanitarian assistance can be divided into three categories: direct assistance, which is the face-to-face distribution of goods and services; indirect assistance, which is at least one step removed from the population and involves such activities as transporting relief goods or relief personnel; and infrastructure support, which involves providing general services, such as road repair, airspace management and power generation that facilitate relief, but are not necessarily visible to or solely for the benefit of

¹⁵ A/66/285.

¹⁶ Protecting Persons Affected by Natural Disasters, Inter-Agency Standing Committee Operational Guidelines on Human Rights and Natural Disasters, 2006.

¹⁷ See Covenant Social Service, Disaster Relief: What is an emergency? (www.cssind.org/disaster-relief).

¹⁸ International Federation of Red Cross and Red Crescent Societies, "Complex/manmade hazards: complex emergencies" (available from www.ifrc.org/en/what-we-do/disaster-management/about-disasters/definition-of-hazard/complex-emergencies/).

the stricken population.¹⁹ The European Union for its part interprets the term “humanitarian aid” as including traditional responses to humanitarian crisis, that is, material relief assistance and services as shelters, water and medicines; emergency food aid at short-term distribution and supplementary feeding programmes; relief coordination, protection and support services like coordination, logistics and communications; reconstruction relief and rehabilitation, which involves repairing pre-existing infrastructure as opposed to longer-term activities designed to improve the level of infrastructure; and disaster prevention and preparedness in terms of disaster risk reduction, early warning systems, contingency stocks and planning.²⁰

26. Irrespective of the terminology used, all humanitarian responses have the same objective: to save lives, to alleviate suffering and to maintain and protect human dignity during and in the aftermath of emergencies. They are guided by the principles of humanity, impartiality, neutrality and independence. Furthermore, during emergencies, the timeliness of humanitarian aid and the protection of vulnerable groups become vital, particularly at the stage of rescue.

IV. Affected populations

27. Persons affected by and victims of conflicts and disasters include internally displaced persons, who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognized State border, refugees, and stateless persons.

28. There are other groups of people who are particularly vulnerable in post-conflict and post-emergency situations. “Vulnerable groups” refers to all those persons that can be at risk and affected by the negative effects of disasters or conflicts. Their vulnerability will depend on their social, economic, political, cultural and ethnic position. Humanitarian action in all post-disaster or post-conflict settings should pay particular attention to women, children, older persons, persons with disabilities, indigenous peoples, minorities and LGBTI persons. It is also essential that affected populations are sensitized to the fact that they are rights-holders, not mere beneficiaries of charitable action.

A. Women and girls

29. In emergency, post-disaster and post-conflict situations, gender-based discrimination increases the vulnerability of women and girls, including those with disabilities. Protection activities established in this framework by national and international stakeholders should to adopt a holistic approach to address these issues from an institutional perspective with an impact on national policies and regulations, thus avoiding having to limit interventions to specific activities that will only respond partially to the problem.

30. Women and girls must be one of the prioritized groups for humanitarian aid, relief and recovery. Special protection approaches should be considered during the planning process of the response and humanitarian aid. Women’s participation in humanitarian aid

¹⁹ World Health Organization, Humanitarian Health Action, Definitions: emergencies (available from www.who.int/hac/about/definitions/en/).

²⁰ European Commission, Humanitarian Aid and Civil Protection, “Humanitarian aid”, 15 April 2014 (see <http://ec.europa.eu/echo/en/what/humanitarian-aid/>).

decision-making must also be promoted and guaranteed. Mechanisms to prevent gender-based violence, sexual harassment and rape should be put in place, as should legal aid and social assistance to victims of sexual and of gender-based violence. In situations of international or non-international armed conflict, humanitarian aid and reconciliation processes should take into account traditional practices of having women as spoils of war. In addition, women from indigenous and minority communities face multiple forms of discrimination and require specific protection measures against both gender-based discrimination and racist attitudes.

31. In its resolution 1325 (2000) on women, peace and security, the Security Council set out the international framework in this regard. In particular, it urged Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict, and called upon all actors involved, when negotiating and implementing relevant agreements, to adopt a gender perspective, including, *inter alia*, the special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstructions. Effective legal frameworks must prohibit and criminalize violence against women and girls, prevent violence and safeguard survivors.

B. Children

32. The United Nations Children's Fund (UNICEF) recognizes that when an emergency strikes, whether a sudden onset natural disaster or an armed conflict, children require special protection to ensure their safety and well-being.²¹ The core commitments for children in humanitarian action constitute the UNICEF central policy on how to uphold the rights of children affected by humanitarian crises. In her report on the impact of armed conflict on children, the independent expert appointed by the Secretary-General in 1994, Graça Machel, called for an end to the targeting of children in armed conflicts.²² In the report, the independent expert highlighted the fact that millions of girls and boys were victims of killing, maiming, torture, rape, sexual exploitation, abduction, forced labour and other violations of the rights of the child in pre-conflict, conflict and post-conflict situations. She recognized that girls were more vulnerable, that the recruitment and use of children in armed conflict was a violation of international law, as were the attacks on and the military use of protected places that usually have a significant presence of children, such as schools, hospitals and homes. In addition, she emphasized that the fact that children were still being shamefully abused was "clear indication that we have barely begun to fulfil our obligation to protect them".²³ Girls and boys are right-holders and therefore need to be also involved in the humanitarian assistance process.

C. Older persons

33. Older persons are among the most affected during disasters and conflicts. Disabilities, displacement, disease, malnutrition, discrimination and insecurity worsen the living conditions of the elderly during post-conflict and post-disaster situations. The needs

²¹ See UNICEF, Child protection from violence, exploitation and abuse, Child protection in emergencies at www.unicef.org/protection/57929_62178.html.

²² A/51/306.

²³ *Ibid.*, para. 313.

of older persons should therefore be included in immediate and long-term humanitarian relief and assistance, as well as in humanitarian policies and guidelines.

D. Persons with disabilities

34. Persons with disabilities²⁴ are disproportionately affected in situations of disaster and conflict because many of the resources for humanitarian aid, shelter and assistance become inaccessible for them. In addition, there is a direct correlation between discrimination against persons with disabilities and insufficient resources. Humanitarian aid, rescue, relief and rehabilitation should therefore meet the needs of the whole population and also include the participation of persons with disabilities in all stages of emergency response. Disability in post-disaster and post-conflict situations also rises because people are injured and need specialized assistance and resources.²⁵

E. Indigenous peoples and minorities

35. Indigenous peoples²⁶ and minorities²⁷ have traditionally been excluded from development. Their settlements are mainly in rural areas, which are prone to natural hazards and high levels of poverty. This places them at risk in the event of disasters and conflicts. It is important to recognize and better understand indigenous peoples and minorities, and to boost their knowledge of mechanisms established for disaster risk reduction.²⁸

F. LGBTI persons

36. Stigmatization and discrimination based on sexual orientation increase gender-based violence in post-conflict and post-disaster situations, negatively affecting LGBTI persons with regard to the provision of food assistance, shelter and humanitarian aid.

V. A human rights-based approach

37. Human rights are the universal legal guarantees that protect individuals and groups against actions and omissions interfering with fundamental freedoms, entitlements and human dignity.²⁹ According to UNICEF, human rights principles and values are not only the

²⁴ See Convention on the Rights of Persons with Disabilities, art. 1.

²⁵ See the report on the Panel Discussion on Disaster Resilience and Disability: Ensuring Equality and Inclusion, United Nations Headquarters, 10 October 2013.

²⁶ See E/CN.4/Sub.2/1986/7 and Add. 1-4. For the concept of "indigenous and tribal peoples", see the Convention concerning Indigenous and Tribal Peoples in Independent Countries, art. 1. See also "The concept of indigenous peoples", Department of Economic and Social Affairs, Secretariat of the Permanent Forum on Indigenous Issues, Workshop on data collection and disaggregation for indigenous peoples, New York, 19-21 January 2004.

²⁷ It is not possible to conclusively define the concept of minority or even to identify existing minorities, or build a conclusive list of minorities. See José Bengoa, "Minorías: existencia y reconocimiento", working paper (E/CN.4/Sub.2/AC.5/2000/WP.2). See also the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135, annex).

²⁸ R. Shaw et al., "Indigenous Knowledge – Disaster Risk Reduction", policy note, European Union, UNISDR, Kyoto University, 2008.

²⁹ OHCHR, Frequently asked questions on a human rights-based approach to development cooperation,

foundation for development, but also for the response in emergencies. Human rights principles of universality and non-discrimination mean that the promotion of social inclusion, equality and justice should be central concerns.³⁰

38. The human rights-based approach is a conceptual framework for the process of human development that is normally based on international human rights standards and operationally aimed at the promotion and protection of human rights. It seeks to analyse the inequalities that lie at the heart of development problems and those in emergency situations, as well as to redress discriminatory practices and the unjust distribution of power, which impede development.

39. A human rights-based approach identifies rights-holders and their entitlements, and corresponding duty-bearers and their obligations, working towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations. It is based on the premise that the empowerment of rights-holders and the challenging of duty-bearers are in themselves important results. It recognizes every human being both as a person and as a right-holder and envisages the guarantee of human rights protection and accomplishment, mainly by the States and other actors in emergency situations and humanitarian response.

40. A human rights-based approach requires that the following principles and standards derived from human rights treaties guide all humanitarian response:

- (a) Universality: human rights must be afforded to everyone, without exception;
- (b) Indivisibility: human rights are indivisible and interdependent;
- (c) Participation and consultation: people from all sectors have to participate in the decisions to protect their rights and their opinions must be taken into account;
- (d) Non-discrimination: human rights must be guaranteed without discrimination of any kind, with due regard for the special needs of victims, particularly vulnerable persons, especially in relation to policies and practices that may have a discriminatory effect on, for instance, persons with disabilities owing to their lack of inclusiveness and accessibility;
- (e) Accountability: mechanisms of accountability should be created for the enforcement of rights. A human rights-based approach in post-disaster and post-conflict situations emphasizes measurable and enforceable obligations through mechanisms of accountability, which helps to strengthen political commitment and justifications for resource allocation, and improves incentives for the provision of social services without discrimination.³¹ This approach therefore opens up international mechanisms of human rights accountability and oversight in such contexts.³² Furthermore, accountability is a process that helps to identify what works, so it can be repeated, and what does not, so it can be revised. It is a way of checking that reasonable balances are fairly struck;³³

New York and Geneva, 2006.

³⁰ UNICEF, "A human rights-based approach to programming in humanitarian crises: is UNICEF up to the challenge?", 2003.

³¹ See "Towards freedom from fear and want: Human rights in the post-2015 agenda", Thematic Think Piece, OHCHR, May 2012, pp 6-7.

³² See Dug Cubie and Marlies Hesselman, "Accountability for the human rights implications of natural disasters: a proposal for systemic international oversight", *Netherlands Quarterly of Human Rights* (forthcoming March 2015).

³³ A/HRC/7/11, para. 99.

(f) **Transparency:** Governments and humanitarian partners, both national and international, must be transparent about all information and decision-making processes relating to rights. Decision-makers wanting to manage emergency situations, however, sometimes do not disclose certain information relevant to disaster mitigation. Governments, should, in principle, disseminate all relevant information to the general public. Information should not be distorted to prevent social panic. It is indeed foreseeable that, in the process of disseminating information, some simplification would be not only inevitable but even necessary. It is important to highlight, however, that, in such circumstances, such government initiatives and accountability require records to be kept of the decision-making process;

(g) **Do no harm or do less harm:** although aid can become part of the dynamics of a conflict and may even prolong it, humanitarian organizations must strive to “do no harm” or to minimize the harm they may be inadvertently doing simply by being present and providing assistance.³⁴

41. In the programme for reform (1997),³⁵ and its second phase, an agenda for further change (2001),³⁶ the Secretary-General called upon United Nations agencies to make human rights a cross-cutting priority for the United Nations system. In 2003, a group of United Nations agencies, including the United Nations Population Fund (UNFPA), committed to integrating human rights into their national development cooperation programmes by adopting a common understanding on a rights-based approach.³⁷ In November 2013, the Secretary-General launched the “Human Rights Up Front” initiative, which aims at improving the United Nations response to safeguard human rights in complex crises and prevent horrendous human suffering. The need for early action, and the crucial role of responding early to human rights violations, is at the heart of the initiative. Though framed in terms of the protection of human rights, it also includes the task of protection of civilians, with the importance of preventive efforts being consistently emphasized. Another central aspect is better organizational preparedness by the United Nations. The Secretariat and United Nations agencies, funds and programmes are to ensure that the United Nations System, both on the ground and at Headquarters, is appropriately prepared – early on – to deal with evolving crisis situations.

42. There seems to be a cyclic process between human rights violations, humanitarian crises and humanitarian response. Although this cyclic dynamic is not necessarily a linear process, some stages have been identified, both for conflicts and natural disasters. According to OHCHR, when human rights violations are a consequence of conflict situations, the sequence of events is as follows:

- (a) Human rights violations as causes of conflict;
- (b) Humanitarian crisis;
- (c) New violations: consequences of conflict and humanitarian crises;
- (d) Pre-existing human rights issues are exacerbated;
- (e) Human rights promotion and protection as objective of peace agreements.³⁸

³⁴ The “do no harm” principle, developed by Mary B. Anderson in the 1990’s, has developed into an approach, inspiring a series of training workshops for humanitarian workers.

³⁵ A/51/950.

³⁶ A/57/387 and Corr. 1.

³⁷ UNFPA, “The Human Rights-Based Approach”, available at www.unfpa.org/rights/approaches.htm.

³⁸ See OHCHR, *International Legal Protection of Human Rights in Armed Conflict* (New York and Geneva, 2011).

43. Lastly, when human rights violations are a consequence of natural disasters, OHCHR sees the sequence of events as follows:

- (a) Natural disaster;
- (b) Humanitarian crisis;
- (c) Pre-existing human rights issues are exacerbated and new violations as consequences of the disaster;
- (d) Human rights inform planning and delivery of humanitarian response;
- (e) Human rights integrated into emergency preparedness plans.

VI. International normative framework

A. United Nations human rights framework and mechanisms

44. To increase the effectiveness and scope of human rights protection in post-disaster and post-conflict situations, there is a need for a holistic and complementary approach among the different branches of international law: international human rights law, international humanitarian law, refugee law and international criminal law. The international human rights legal framework is composed of specific treaties and soft law that aim to protect people affected by natural disasters and conflicts. As protection is not limited to survival and security in an emergency situation, all relevant guarantees with regard to civil and political rights, as well as economic, social and cultural ones, will contribute to dignify the people affected.

45. Some of the key principles in relation with humanitarian assistance were formulated by the General Assembly in its resolution 43/131 on humanitarian assistance for victims of natural disasters and similar emergency situations, in which the Assembly reaffirmed the sovereignty of affected States and their leadership in humanitarian assistance in their own territories, stressed the important contribution made in providing humanitarian assistance by governmental and non-governmental organizations, and urged States to participate closely with affected countries in international efforts with a view to facilitating the transit of humanitarian assistance.

46. States therefore have the primary responsibility for coordinating humanitarian assistance, and are at least under the moral duty to accept bona fide offers of assistance by States or other relevant organizations. This emphasis on the States' role does not however, go to the detriment of the role of local communities and the fact that planning for disaster risk reduction should be rather de-centralized and concretized.

47. The Universal Human Rights Index documents a number of concrete recommendations, made in the context of the universal periodic review in relation to humanitarian action in situations of natural disasters, that relate primarily to strengthening or improving measures for disaster reduction and to responding appropriately to emergencies, given the vulnerability of certain countries. Other countries were asked to continue their efforts to strengthen and to share their experience, lessons learned, methods and best practices in prevention and humanitarian response applied and particularly considering providing assistance in case of natural disasters and taking positive steps with regard to climate change. Several recommendations relate to post-conflict situations and to continuing implementation of the Security Council resolutions on women, peace and security; ensuring the rights of children and women and women's participation in reconstruction and peacebuilding processes; improving access to education; intensifying efforts to prevent, punish and eradicate all forms of violence against women; preventing

and combating widespread economic exploitation of children; and strengthening institutional capacities in the protection and promotion of human rights in post-conflict situations through the incorporation of a human rights-based approach into all policies and practices.

48. In its resolution 1325 (2000) on women, peace and security, the Security Council reaffirmed the important role of women in the prevention and resolution of conflicts, peace negotiations, peacebuilding, peacekeeping, humanitarian response and in post-conflict reconstruction, and stressed the importance of their equal participation and full involvement in all efforts for maintenance and promotion of peace and security. It urged all actors to increase participation of women and incorporate gender perspectives in all United Nations peace and security efforts. It also called upon all parties to the conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict. It provided a number of important operational mandates, with implications for Member States and United Nations entities.

49. Similarly, article 11 of the Convention on the Rights of Persons with Disabilities not only enshrines obligations to ensure protection and safety of persons with disabilities in situations of armed conflict and humanitarian emergencies, but also requires an inclusive approach for the design of disaster risk reduction policies accessible to persons with disabilities.

50. In recent years, attention has been drawn in particular to humanitarian aid and assistance owing to emergencies provoked by armed conflicts and disasters around the world, leading to the development of a specialized framework and mechanisms, including:

(a) Humanitarian policies, agreements, guidelines, documents and tools of the Inter-Agency Standing Committee³⁹ for humanitarian assistance, such as the Humanitarian Charter and Minimum Standards in Disaster Response, the Guidelines on Mental Health and Psychosocial Support in Emergency Settings, the Gender Handbook in Humanitarian Action, the Operational Guidelines on Human Rights and Natural Disasters and the Guidelines on Gender-Based Violence Interventions;

(b) The Sphere Project, a voluntary initiative that brings together a wide range of humanitarian agencies around the common aim of improving the quality of humanitarian assistance and accountability of humanitarian actors to their constituents, donors and affected populations. Established in 1997, it is today a vibrant community of humanitarian response practitioners.

51. Other important humanitarian mechanisms include:

(a) The Humanitarian Accountability Partnership, which has established concrete norms, training, code of conduct, protection of sexual exploitation and abuse⁴⁰ guidance and certification;

(b) The Hyogo Framework for Action 2005–2015: Building the Resilience of Nations and Communities to Disasters;

(c) The Global Humanitarian Platform, established to bring together United Nations and non-United Nations humanitarian organizations to explore ways of exploring humanitarian partnerships;

³⁹ Established pursuant General Assembly resolution 46/182.

⁴⁰ See Protection from Sexual Exploitation and Abuse by UN and Related Personnel (www.un.org/en/pse/taskforce).

(d) The Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, adopted at the thirtieth International Conference of the Red Cross and Red Crescent in 2007, and the Code of Conduct in the event of disasters;

(e) The International Law and Standards Applicable in Natural Disaster Situations of the International Development Law Organization;

(f) The World Vision Minimum Inter-Agency Standards for Protection Mainstreaming;⁴¹

(g) The Food Assistance Convention.

B. International humanitarian law and mechanisms

52. The Geneva Conventions and the Additional Protocols thereto are at the core of international humanitarian law, the body of international law that seeks to limit the effects of armed conflict. They restrict the means and methods of warfare and protect people who are not or no longer participating in hostilities (civilians, medical and other health professionals, humanitarian personnel, the wounded, sick or shipwrecked, or prisoners of war). The Conventions and the Protocols thereto call for measures to be taken to prevent or to put an end to all violations of international humanitarian law. They contain stringent rules to deal with "grave breaches". Those responsible for grave breaches must be sought, tried or extradited, whatever their nationality.

53. The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Its work is based on the Geneva Conventions of 1949, the Additional Protocols thereto, its Statutes, the Statutes of the International Red Cross and Red Crescent Movement and the resolutions of the International Conferences of the Red Cross and Red Crescent. ICRC addresses the effects of conflict by, for instance, focusing attention on refugees and displaced persons (in complementarity with the Office of the United Nations High Commissioner for Refugees (UNHCR)), mine clearance, training armed forces in the use of legitimate force, doctrine development and counselling. One of its main activities is also the search for missing persons: in this area, it has formulated an international standard of ante- and post-mortem using forensic DNA analysis. ICRC forms part of the International Red Cross and Red Crescent Movement. Seven fundamental principles guarantee the continuity of the Movement's work: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

C. Regional institutions and mechanisms for humanitarian aid and assistance

54. Various regional, subregional and national multi-sectoral and multi-stakeholder initiatives evaluate and implement humanitarian assistance and human rights law in post-disaster and post-conflict situations.

⁴¹ Available from http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3752.pdf.

55. In Africa, the initiatives implemented include Africa Humanitarian Action; the Programme of Action for the Implementation of the Africa Regional Strategy for Disaster Risk Reduction; the African Union Commission, which facilitates and coordinates the implementation of the Regional Strategy, the Programme of Action and the Hyogo Framework for Action; the Africa Regional Platform for Disaster Risk Reduction; periodic high-level meetings of the African Ministerial Conference on Disaster Risk Reduction and the African Ministerial Conference on the Environment; regional economic communities; and the Planning and Coordinating Agency of the New Partnership for Africa's Development (NEPAD).

56. Important initiatives in Asia include Asian Disaster Reduction and Response Network and the Asian Disaster Preparedness Center.

57. In Latin America, several intergovernmental bodies have been established, including the Organization of American States, with the working group of the Inter-American Network for Disaster Mitigation; and the Community of Latin American and Caribbean States, with the Risk, Emergency and Disaster Task Force Inter-Agency Work Group for Latin America and the Caribbean. The following mechanisms and forums have also been created: the Caribbean Disaster Emergency Management Agency; the Ibero-American General Secretariat; the Coordination Center for the Prevention of Natural Disasters in Central America; and the Comprehensive Risk Management Policy for Central America.

58. In Europe, the Emergency Response Coordination Centre, operated within the Directorate General for Humanitarian Aid and Civil Protection, was established to ensure a coordinated, more rapid response to disasters both inside and outside Europe, using the resources of the 32 countries participating in the European Union Civil Protection Mechanism.

VII. Good practices

A. National legal frameworks and mechanisms

59. Governments should not use humanitarian assistance for political purposes. Similarly, political parties should not take advantage of an emergency to better position themselves among the population. Political patronage should be avoided in post-disaster and post-conflict situations; affected populations, like any other individual or community, continue to have rights and to be voters. In this regard, the responses received from Member States to the questionnaire concerning their legal frameworks and the mechanisms for responding to emergencies resulting from disasters or conflicts from a rights-based approach are described below.

60. Slovakia is working to ensure that the Act on State Security in times of War and Hostilities, Martial Law and Emergency State allows for the distribution of vitally important products and goods to citizens affected by a crisis.

61. In Colombia, Law No. 1523 stipulates that humanitarian assistance must be provided on the basis of the principles of equality, timeliness, relevance and effectiveness. Article 1 of the law stipulates that all individuals are to receive the same support and the same treatment in situations of disaster and danger. A manual on the standardization of humanitarian assistance details more principles.

62. In Chile, the national civil protection and emergency system is based on the Constitution of the State. To enforce the guarantees enshrined in the system, particularly with regard to disasters, a number of relevant laws and regulations have been formulated.

63. In Mexico, as part of the national strategy to respond to humanitarian crises, the General Civil Protection Act has been adopted to provide for the establishment of a national mechanism for disasters from the viewpoint of integrated risk management, known as the national system of civil protection (Sistema Nacional de Protección Civil).

64. In Japan, various measures have been taken to improve: its guidelines on nuclear emergency preparedness and emergency response; the scope and extent of basic and detailed health management surveys; dose limits of radiation; access to accurate information on radiation and its health effects; transparency and accountability of the nuclear industry and regulatory authority; and the participation of affected communities in decision-making processes.

65. In addition to the above good practices, it is equally important that national laws for disaster risk reduction be enacted to make provisions for the concrete allocation of funds to disaster risk reduction. Evidence abounds of the immediate and direct effects that natural disasters and conflicts have on the economy of communities and countries, in addition to their long-term impact. In most disasters, the bulk of immediate damage comes from destroyed assets (stock), such as buildings, infrastructure, inventories and growing crops. Disasters also generate short- and long-term losses in economic activity and income (flow) in affected areas, as people and companies lose their means of production and access to markets. Economic activity picks up gradually during the years of reconstruction, starting with emergency response and humanitarian assistance. Capital assets can be regenerated through reconstruction investment, which generates income as work progresses. Such natural disasters as storms and droughts have, according to one study, a moderate but negative, permanent impact on income growth.⁴²

66. The above-mentioned examples would indicate that Africa and Latin America have improved their multilevel and multisectoral work on emergency preparedness and humanitarian response, the result of the effects they have had to face in the conflicts and disasters experienced in recent decades.

B. Participation of the community and the persons affected

67. Humanitarian assistance is developed in a comprehensive framework where legal, social, political, ethical and cultural relations need to be taken into account. In the legal framework, the State is the duty-bearer while people and communities are rights-holders, not just the recipients of aid. This issue is a central theme in education, formal and informal processes linked to disaster prevention and reduction, rehabilitation and reconstruction. Some initiatives could be put in place in this regard:

(a) Community participation programmes, which should be accessible to and inclusive of rural, indigenous and displaced communities, women and girls and persons with disabilities; actions in the field of risk microzonation should consider community involvement and identify the specific characteristics of the affected community;

(b) Specific school safety plans should be developed and include other forms of institutions, such as special schools;

⁴² Statistical Yearbook for Asia and the Pacific 2011, "Assessing economic impact of natural disasters: A mix of stock-and-flow indicators" (see www.unescap.org/stat/data/syb2011/II-Environment/Natural-disasters.asp).

(c) Cultural patterns that allow women and men to participate equally in decision-making processes at home and in the community on health and other issues need to be taken into account.

68. Measures to rebuild local communities following their destruction by disasters are essential. Affected populations are, as a result, forced to live in a totally new environment, such as in temporary housing units, shelters and camps. It is recognized fact that, although affected populations are expected to build a new community themselves, not all of them can adjust to a new environment.

69. Individuals, as rights-holders, have the right to participate in the design and evaluation of policies relating to their resettlement. The participation of victims and affected persons ensures the transparency of administration and contributes to the sustainability of humanitarian aid, relief and recovery actions. Local authorities have the obligation to consult and involve the persons concerned during the early stages to avoid a further gap in communication with beneficiaries.

70. The private sector and civil society also play an important role. States, for instance, can promote prior agreements with companies in order to avoid price speculation and shortages, and can also buy from local producers in order to improve the local economy. Rising food prices hinder access to food to millions of people, even when products are available. In addition, the final increase in food prices does not correspond to prices of producers, who continue to earn very little from selling their crops, and thus perpetuates their poverty and worsens their situation in emergencies.

C. Gender focus

71. One best practice identified from the responses received concerned the consideration of gender issues in disaster responses; for example, the provision of personal hygiene kits, food and water supplies, differentiated between men and women.

72. A gender-based approach takes into account the specific needs of women; for example, more toilets need to be built for women because they usually carry their children with them. While the "code of conviviality" establishes that common kitchen brigades should be mixed to favour gender equality, shelters should have separate restrooms for men and women, and a private room for intimate cleaning for women. Protection mechanisms for gender-based violence and rape are another example. Women and girls, and in particular those with disabilities, often are victims of not only rape and sexual harassment but also trafficking and negative coping strategies. For example, they may be at a high risk of sexual assault when they collect water or go to the restroom; good lighting is therefore essential.

73. As women, girls, older persons and children are also at risk of domestic violence, centres for psychological assistance and legal aid ought to be in place. Shelters for women and children survivors of violence could be considered part of humanitarian aid.

74. There is a need to develop thematic guidelines on female empowerment, and on children and persons with disabilities in post-disaster and post-conflict situations. With regard to children, special attention should be paid to former child soldiers and victims of any form of violence. Secure playing areas for children and parents need to be put in place in order to encourage solidarity and to ensure the mental health of affected persons.

75. Women's involvement in the delivery of humanitarian aid supplies and arrangements is important in order to avoid preferential treatment towards men and for women's empowerment in the community. Women should not have to bear the burden of caring alone for their families; they should not be sexually abused in return for food or other kinds of assistance; they need to have the same access to services and assistance as

men; and it should not be forgotten that they often take care of their children and elderly family members as well.

D. Respect for cultural values

76. Providing food and clothes requires taking into account traditional and cultural practices. There is also a need to increase indigenous community awareness of support and resilience, which are important for the recovery of livelihoods of the affected persons on their own territory or on a new one. Information on universal design and accessibility should also be considered and welcomed for persons with disabilities.

77. Humanitarian kits responding to cultural practices and the needs of the population in terms of food, kitchen, home and cleaning are indispensable. Support programmes for nutrition should be designed in accordance with cultural requirements relating to food and the nutritional needs of women, girls, children, including those with disabilities, and targeted populations.

E. Multilevel approach

78. Humanitarian aid is based on legal and operational frameworks at the international, regional, national and local levels, which therefore also calls for a multilevel approach to facilitate the decentralization of such an emergency response.

79. Since local governments and traditional authorities are normally the closest to the affected populations, their experience and lessons learned should be considered for emergency response planning and implementation. Municipal governments should make reasonable efforts to ensure adequate and decent living conditions in shelters. To that end, guidelines should be elaborated and published for managing shelters, and identify areas where special attention is necessary in assisting vulnerable groups.

80. A regional approach is also necessary, given that regional organizations and mechanisms have significant expertise and resources to offer when dealing with disaster situations. Regional initiatives in humanitarian aid should also be taken into account.

81. Disaster prevention and disaster risk reduction include practices to prevent serious human rights violations and to avoid the historical accumulation of violations of economic, social and cultural rights, including the right to food.

VIII. Challenges

82. The main challenge is to develop humanitarian responses and actions by States and specialized, global and national initiatives that fully take into consideration the protective legal framework granted by international human rights law, international humanitarian law and other relevant branches of international law. A human rights-based approach is important because it insists on rights-holders and duty-bearers. By putting the needs of victims at its centre, international humanitarian law is not less important. It further strengthens the protection and assistance afforded to affected populations. They should frame, with other relevant branches of international law, all humanitarian work related to disasters and conflicts. Furthermore, both international humanitarian law and international human rights law support the recognition and prosecution of grave human rights violations or serious violations of international humanitarian law in the context of armed conflict. If humanitarian assistance is not based on such a framework, there is a risk that this approach will be too limited and not integrate all the basic needs of affected people in the wider

planning process, as well as the responsibility of the State to lead the recovery process. There is also a risk that some important issues will be postponed to recovery and reconstruction, and will thus not be included in the State's development strategy. Another key challenge is that reconstruction efforts, an essential part of recovery, are too often neglected.

83. In the rush to provide humanitarian aid and save lives, less attention is paid to the human rights protection that must be provided to people affected by disasters and conflicts. In addition, not much attention is paid to the rights of vulnerable persons.

84. Access to water was identified as a significant challenge following disasters and was described as fundamental to prevent rape. Women are most vulnerable when they are required to walk long distances to reach water. In addition, there are difficulties in the provision of water supply based on international standards for hygiene and clean water. Women's particular requirements should be assessed in the case of emergency response. Lack of access to aid supplies, information, communication and services also needs to be addressed if the inclusiveness of persons with disabilities in disaster risk reduction policies is to be guaranteed.

85. States must step up their efforts in the prevention of domestic violence and gender-based violence in post-conflict and post-disaster situations. Information and comprehensive assistance are needed to support women and children survivors of violence both in and outside the emergency areas, for example in host communities. It is important to offer special attention, which integrates a cultural approach, to displaced persons, persons with disabilities, LGBT persons, older persons and indigenous peoples. States, through the implementation of the four pillars described in Security Council resolution 1325 (2000) – participation, protection, prevention, and relief and recovery – should promote the pivotal role that women play in conflict management, conflict resolution and sustainable peace, because they are still excluded from participation in peace processes. Procedures and mechanisms should be developed to involve women in protection, prevention and relief and recovery stages. Pursuant to Council resolution 1820 (2008), States are also required to establish the framework and mechanism to protect women, girls and children from violence, including sexual violence in situations of armed conflict.

86. It is also important to avoid political favouritism so that relief is guaranteed for all concerned, not just for political supporters. Governments should not use humanitarian attention for political purposes, and political parties should not use emergency situation for better positioning themselves among the population.

87. Other identified challenges include:

(a) Lack of awareness of the Operational Guidelines on the Protection of Persons in Situations of Natural Disasters;

(b) Lack of adequate internalization of the duties and rights with regard to the promotion and protection of human rights in situations of natural disasters, essential for their proper implementation;

(c) Poor decentralization of policies applied to disaster prevention and disaster risk reduction;

(d) Lack of inclusiveness of and accessibility to at-risk groups, including women, children, older persons, persons with disabilities and indigenous peoples, as well as the lack of involvement and partnership with private actors.

88. Laws should be in place for disaster prevention and mitigation, and States should be obliged to allocate the resources required to improve the living conditions of persons affected by disaster and conflict.

89. In some States, constitutional rights may be limited, for instance when a state of emergency has been declared. Even in states of emergency resulting from disaster or conflict, however, the State must respect the core of human rights and ensure that the specific legislations respects its own Constitution, international human rights treaties and the rules contained in international declarations on humanitarian assistance.

90. States invest financially in humanitarian disaster and conflict relief in a planned way, avoiding budgetary risks that jeopardize public investment in normal times. The establishment of national funds for recovery and reconstruction could be important initiatives.

91. Local mechanisms for denouncing violations of human rights and international humanitarian law in disaster and conflict situations should be put in place to ensure the safety, security and freedom of the persons affected. Complaints and feedback systems can be designed and implemented as participatory processes, as can democratic-based actions.

92. In recent times, the term "disaster prevention" has often been coupled with "disaster mitigation" or "disaster risk reduction". This may have been caused by the growing awareness that "hazards are inevitable, and the elimination of all risks is impossible".⁴³ In the case of disasters, too much emphasis on prevention in planning to address disasters might lead to the dissemination of an unfounded belief in safety. To achieve the ultimate and foremost goal of saving lives, more attention should be paid to preparedness, early warning and risk reduction.

93. The first action for preparedness for a disaster would, therefore, be to search what types of risks exist in a particular area of the country, and then to raise public awareness of those risks. Unsound economic and urban development often leads to great loss of human life by natural hazards, besides reducing the sustainability of development. The perspective of risk reduction should therefore be incorporated into national development plans.

94. The main challenges in peacebuilding and transitional justice are the allocation of inadequate funds and the awareness of the international community that the resilience of livelihoods is fundamental for peacebuilding and understanding the interdependence of civil, political, economic, social and cultural rights.

IX. Main conclusions

95. Although rescue, relief and rehabilitation action should be compliant with human rights, this is not always the case. A human rights-based approach includes the principles of direct and intentional linkage to human rights; transparency; participation, inclusiveness and consultation of those affected and beneficiaries; non-discrimination; special attention to the needs of at-risk and marginalized groups within the larger set of beneficiaries; and accountability and timeliness.

96. Humanitarian intervention should take into account legal, social, political, ethical and cultural relations. It is fundamental that the legal framework underline that the State holds obligations and individuals and communities hold rights.

97. To increase the effectiveness and scope of human rights protection in post-disaster and post-conflict situations, a holistic and complementary approach among the different branches of international law is necessary.

⁴³ See United Nations Office for Disaster Risk Reduction, "A Safer World in the 21st Century: disaster and risk reduction", available at www.unisdr.org/who-we-are/international-strategy-for-disaster-reduction.

X. Recommendations

98. Member States should recall that the full respect of all human rights and other relevant branches of international law can ensure adequate protection in humanitarian action in post-conflict and post-disaster situations. Rights relating to the basic necessities of life (in particular relating to food, drinking water, shelter, clothing, adequate health services and sanitation), physical security and integrity (protection of the right to life and the right to be free of assault, rape, arbitrary detention and kidnapping, and threats to these rights), civil and political protection needs (rights to religious freedom and freedom of speech, personal documentation, political participation, access to courts, and freedom from discrimination) and other economic, social and cultural protection needs (such as access to education, to receive restitution or compensation for lost property and to work) should be protected and respected through the design and implementation of concrete initiatives and mechanisms at all levels.

99. Approaches that are participatory, gender-based, culturally sensitive, accountable, anti-discriminatory and comprehensive, and that adhere to the principles of universal design, accessibility and inclusiveness and "do no harm" must be included in all humanitarian aid plans and mechanisms during the design, rescue, relief and recovery phases. These programmatic and political issues allow for better application of international human rights law and international humanitarian law standards, and offer a comprehensive response to crises. Mechanisms for respect of human rights of the most vulnerable groups should be defined in preparedness for disasters.

100. States should also recognize the need of specific funding for emergency response, relief and reconstruction. The allocation of funds for that purpose should be a priority in the annual national budget. In addition, States should identify long-term development budgets – and not only with costs of recovery and reconstruction – to avoid the accumulation of damage.

101. Special attention should be paid to the protection of human rights of vulnerable persons, in particular women, children, older persons, displaced persons and persons with disabilities. The vulnerability of children, particularly girls, is a priority when planning prevention and humanitarian assistance. Attacks on places usually frequented by children, such as schools, hospitals, parks and their own homes, should be strongly condemned and avoided at all costs. The protection of such sites should be a priority for United Nations peacekeepers.

102. Since there are many cases of States occupying the territory of other States, it is important to highlight that, in the event of armed conflict, the occupying force is responsible for the respect of international humanitarian law and the protection of the human rights of the population of the occupied State.

103. Ensuring a human rights-based approach implies a high standard of accountability. States that do not effectively protect their population during and after a conflict or a disaster should therefore be held accountable.

104. Taking into account that rescue, relief and recovery actions will depend on the context on the ground, humanitarian action may sometimes be at risk of infringing or violating the human rights of the affected people, thus contravening the "do no harm" principle. For that reason, plans for emergency preparedness and humanitarian aid should be based on the human rights framework in order to prevent the living conditions of the affected population from worsening during the delivery of humanitarian assistance.